COPY FOR MR. J. ALLAN ROSS

HYDRO-ELECTRIC INQUIRY COMMISSION

GENERAL REPORT

REVIEW OF LEGISLATION

JOSEPH H. W. BOWER
SECRETARY

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on

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Toronto, Ontario,
December 6, 1923.

The Hydro-Electric Inquiry Commission,
W. D. Gregory, Esq., Chairman,
Toronto, Ontario.

re: General Report - Review of Legislation

Mr. Chairman and Gentlemen:

In accordance with your instructions a general report entitled "Review of Legislation" has been prepared in accordance with the general plan approved of by the Commission on January 2nd, 1923.

This report is essentially different from other general reports that have been prepared for the Commission from time to time, inasmuch as the matter and discussions contained therein are entirely of a legal nature resulting from a comprehensive examination of the Statutes under which the Hydro-Electric Power Commission of Ontario operates.

While the report has been prepared at my request and under my general direction, the writing of it has been left entirely in the hands of the Commission's legal advisers. The detail work has been done by Mr. R. L. Foster, Barrister, in collaboration with Mr. J. A. McAndrew, K.C. Wherever the studies have touched upon or involved financial considerations and the employment of figures for the purpose of illustration, such references have been carefully checked by Mr. W. H. Brown, of Messrs. Price, Waterhouse & Co.

The subject is such a broad one that those preparing the report found it impossible to treat with it in what may be termed a brief manner and at the same time fully cover the ground. In view of this and in order that a comprehensive idea of the matter contained in the report may be obtained, there has been prepared a section entitled "Introduction", which, in a few pages, gives an outline of the various subjects that are dealt with in the body of the report.

It is not believed that a report of this nature would be of general interest, but, having regard to the fact that there is considerable overlapping, uncertainty and confliction in the Statutes as they now exist, it would appear advisable for this Commission to

present in some form this report to the Government, so that it may form the basis for putting in hand a revision of the Statutes, in order to eliminate the undesirable features which now exist.

Yours very truly,

G.W. Bauer

Secretary.

JEWB:KJ.

REVIEW OF LEGISLATION

INTRODUCTION

During the course of investigation by and on behalf of the Hydro-Electric Inquiry Commission, of the works and undertakings of the Hydro-Electric Power Commission of Ontario (hereinafter referred to as the Commission) it became apparent that in the interpretation of various sections of the Statutes relating to these works and undertakings there have been differences of opinion. Conflicts and confusion have arisen as to the rights and liabilities of the several parties interested in the acquisition, construction, operation and administration of the undertakings of the Commission and in a large measure have been occasioned by amendments to certain provisions of the Statutes, without due regard to the effect of these changes upon other provisions or to the fact that inconsistencies in these Statutes have thereby been created. The radical changes in the scope and policy of Hydro-Electric Power legislation effected by the enactment of the Ontario Niagara Development Acts of 1916 and 1917 and by amendments to the Power Commission Act in 1918, necessitated further amendments (not made) to the Statutes relating to the powers and duties of the Commission in respect of power undertakings within its jurisdiction and control, in order that those powers and duties might be clearly and definitely determined, under the relationship

between the Commission and the Province, changed from that of Agent to Principal to that of Debtor to Creditor.

There is an apparent necessity for a complete revision, and probably consolidation, of the Power Commission Act, the Ontario Niagara Development Act and of other Statutes affecting the powers and duties of the Commission, in respect of works and undertakings acquired, constructed and operated by the Commission for the generation, transmission and distribution of electrical power or energy to municipalities and others. Such revision and consolidation would in effect be a Charter under which the Commission would administer power works and undertakings, committed to its charge in a clearly defined manner for the benefit of those interested therein and entitled thereto.

Pending such revision and consolidation, which require most careful preparation and consideration, immediate amendments to the Statutes should be made to remove doubts and prevent conflict in regard to the powers and duties of the Commission and to define definitely the respective rights and liabilities of the Province, the Commission and municipal corporations, which have entered or may enter into agreements with the Commission for a supply of electrical power or energy.

Our Legal Advisers and Accountants have from time to time during the course of our investigations pointed out defects in the Statutes and divergencies therefrom, and have suggested amendments. A report has been prepared and is annexed hereto, tracing the course

and effect of legislation affecting the administration of power undertakings by the Commission, and setting forth various amendments to the present law, which are considered essential to clearly define the presumed intention of the legislature. The suggested amendments of greatest importance may be briefly summarized as follows:

1. Present Ownership.

The Power Commission Act and the Ontario Niagara Development Act to be amended so as to definitely declare that the several works, equipment plant, supplies, properties and shares or securities of power generating companies and all liens thereon, vested in or controlled by the Commission and employed in or connected with the generation, transmission or distribution of electrical power or energy, or for purposes of resale, and for the payment of the cost of which, the Province has made advances or guaranteed bonds, bank loans or other indebtedness of the Commission, shall be deemed to be so vested in the Commission, subject to a lien in favor of the Province for the advances made, and obligations assumed by the Province as aforesaid, or any balance thereof, not repaid or retired.

2. Sinking Funds.

Sinking fund reserves, to be directed to be established by the Commission for each and every undertaking of the Commission for which separate accounts are kept on its books, and annual sums shall be collected apportioned or set aside and credited to said several sinking fund accounts, and invested by the Commission in

securities of the Province and these securities delivered by the Commission to the Treasurer of Ontario to be held as security for advances made or obligations assumed by the Province, such annual sums to be sufficient with interest at four per cent. per annum to provide within a period of thirty years following five years from the date of commencement of operation of an undertaking, a sinking fund equal to the amount advanced or obligation assumed by the Province for each respective undertaking, the Lieutenant-Governor in Council to be authorized upon the recommendation of the Commission to defer in the case of any specified power undertaking for such period as may be deemed advisable, the date and the basis upon which annual sums on account of sinking fund reserves as aforesaid shall commence to be collected, apportioned or set aside.

3. Interest.

To definitely provide that Municipal Corporations, which have entered into contracts with the Commission for a supply of power, shall pay as part of the cost of power in each year, interest upon the moneys employed by the Commission in the construction, acquisition or operation of the works severally employed in supplying such power at the rate payable in such year by the Commission upon its indebtedness to the Province.

Section 15(1a) to be amended by making provision that in default of determination in any year of the rate of interest payable by the Commission to the Province, the rate charged in

the previous year shall be payable.

4. Future Ownership.

To declare that upon moneys or securities of the Province to the amount, with interest, of the sum advanced and obligations assumed by the Province in respect of any particular power undertaking of the Commission being paid to or delivered to the Treasurer of Ontario, any lien in favor of the Province upon the works and properties comprising such undertaking, shall be discharged, and all works and properties comprising such power undertaking shall be vested in the Commission as Trustee for the municipalities which have met the payments on sinking fund accounts chargeable to them, in proportion to the payments made by them respectively. The Act to declare also upon what trusts the Commission holds works and properties for the repayment of the cost of which municipal corporations do not contribute towards sinking funds.

5. Payments by Municipalities.

If the general policy of the Commission of extending the time for payment of annual power bills and municipal construction accounts be approved, the Act to be amended to legalize this and to place all municipal corporations on a similar footing, with provision for further extension of time in such cases as may be approved by the Lieutenant-Governor in Council.

6. Salaries.

To definitely determine the amount of remuneration to be

paid to members of the Commission, to cover all their services as such, whether in connection with works of the Commission or Companies controlled by the Commission and, if the practice of the Commission of fixing the salaries of certain officers of the Commission without approval thereof by the Lieutenant-Governor in Council, be approved, to repeal the section of the Act requiring that the fixing of the salaries of those officers be subject to the ratification of the Lieutenant-Governor in Council.

7. Auditor.

To provide for the submission of the Reports of the Auditor to the Lieutenant-Governor in Council or to the Legislature.

8. General and Reserve Funds.

To clearly define the extent of the authority of the Commission to employ moneys received by it from any source for purposes other than those for which they were received by the Commission, and the Commission's duty as to the disposition of Reserve and Surplus funds.

9. Publication of Estimates.

To provide one uniform line of procedure relating to the negotiations of power contracts between municipal corporations and the Commission, so that there may not be in the same section of the Act two modes of procedure, under one of which

estimates of cost must be published and not under the other, which latter method appears to be uniformly adopted.

10. Borrowing Powers.

To more clearly express the intention of the Legislature in respect of advances made and obligations assumed by the Province without express appropriations or provision therefor by vote of the Legislature.

11. Taxation.

To provide a uniform basis of taxation on all undertakings of the Commission, whether these consist of works vested in the Commission, or in Companies controlled by the Commission.

SINKING FUND

A. Payment of, by Municipalities.

1. Present Law

Each municipality receiving power from the Commission is required to annually pay to the Commission its proportion of a sum sufficient to form in thirty years with interest at four per cent. per annum a sinking fund for the repayment of advances made by the Province for the purposes of the Commission.

> 23. .... "the Corporation shall annually pay to the Commission its proportion ..... of .....
> (b) an annual sum sufficient to form in thirty years with interest at four per cent. per annum a sinking fund for the repayment of the advances made by Ontario under this Act for the payment of the cost of the works".
> 1906,c.15,s.15; 1907,c.19,s.18; R.S.O.1914, c.39,s.23; 1918,c.14,s.11.

The Commission is authorized to relieve municipalities from payments on account of sinking fund during the first five years of their contracts.

> "Notwithstanding anything in The Power Commission Act contained, a municipal corporation which has entered into or shall hereafter enter into a contract with the Commission for a supply of power may be relieved by the Commission from payment of any sum on account of the sinking fund account for the first five years, during which payments are made to the Commission by the corporation under such contract, and the amounts required from such corporation on sinking fund account shall be payable during the then next ensuing thirty years".
> 1916,c.19,s.12, repealed; 1917,c.20,s.13.

The application of the general provisions of the Power Commission Act to the Niagara System is varied by the terms of

The Ontario Niagara Development Act,1917. This Act provides that "notwithstanding anything contained in any contract ... or in any general or special Act .... every municipal corporation ... under contract with the Commission for the supply of power from Niagara Falls and the vicinity ... shall pay to the Commission a sum equal to the average cost per horse-power to the Commission" and that "in fixing the amount per horse-power so payable ... the Commission shall take into account ... the amount required ... to form a sinking fund sufficient to provide for the repayment of such amounts and to provide renewals and such other charges as the Commission may deem necessary and proper". 1917,c.21,s.5. The Commission has interpreted this provision as overriding Section 23 of the Power Commission Act and leaving it absolute discretion as to how and in what manner and over what period of years sinking funds on the Niagara System are to be established.

2. Historical Sketch.

The general provision with regard to the payment on account of sinking fund by the municipalities to the Commission in Section 23 was not substantially amended from the time of its original enactment in 1906 until 1915.

The Clause was first enacted in 1906 in the following terms:

> "An annual sum sufficient to form in thirty years a sinking fund for the retirement of the securities issued by the Province of Ontario under this Act for the payment of the cost of the works hereinbefore mentioned".
> 1906,c.15,s.15 (b).

In 1907 the Clause was reenacted with the omission of the underlined words. When the Statutes were revised in 1914, the words "by Ontario" replaced the words "by the Province". Then, in 1916, the words "with interest at four per cent. per annum" were inserted and the words "retirement of the securities issued" were replaced by the words "repayment of the advances made". The provision has not been amended since 1916.

In 1916, the original provision with regard to the deferment of sinking fund payments was enacted in the following terms:

> "Notwithstanding anything in The Power Commission Act contained the Commission, <u>with the approval of the Lieutenant-Governor in Council</u> may relieve any municipal corporation which has entered into a contract with the Commission, from the payment of any sum in the sinking fund account during the first five years of such contract, and the amount required from the corporation for sinking fund shall be payable only <u>during the remainder of the term of the contract</u>".
> 1916,c.19,s.12.

The provision was repealed and the present section (page 8) enacted the following year. Whereas the original provision required the approval of the Lieutenant-Governor in Council to any deferment and payment in full by the expiration of the contract; i.e. thirty years, the new section left the matter entirely in the hands of the Commission and allowed the municipalities thirty years after commencing annual payments, or, in effect, thirty-five years.

The provisions of the Ontario Niagara Development Act, 1917, relate only to the Niagara System and were enacted to

authorize the construction of the Queenston-Chippawa Development and to require the municipalities to pay "the average cost per horse-power" to the Commission of power developed at Niagara Falls and its vicinity by the Commission or others, the provisions of Acts and contracts fixing the maximum price of power notwithstanding.

3. Comment. It is clear that there would be a serious discrimination.

The net liability of the Province in respect of Hydro-Electric undertakings as of 31st March, 1923, is $189,857,757.82. No sinking fund is required to be established in respect of $2,505,090. charged to Profits on account of survey work, submission of estimates, etc. No sinking funds were paid by any municipalities prior to 1916. Up to 31st March, 1923, the Commission had deposited or had ready to deposit with the Provincial Treasurer, on sinking fund account, either in cash or securities, a total of $2,508,919.21 to repay advances and guarantees by the Province, totalling $150,277,631.85.

(a) Deferment provisions.

With regard to the deferment of sinking fund payments, our Accountants advise that the Commission has adopted the uniform practice of relieving new municipalities of payments on sinking fund account during the first five years. In effect, therefore, the sinking fund period is normally thirty-five years instead of thirty years. It would seem that the

intention was merely to allow some discretion to the Commission in the case of individual municipalities; and not to authorize wholesale extension of the sinking fund period from thirty to thirty-five years.

Aside from the intention of the present law, however, it is clear that there would be a distinct discrimination, owing to the present worth of money, in favour of a municipality paying thirty annual instalments during the last thirty years of a thirty-five-year period as against a municipality paying thirty annual instalments within thirty years. If the principle of deferment is accepted, and it would appear reasonable to do so, it is urged that it should have the approval of the Legislature and that it should be uniformly applied in all cases. Accordingly it is recommended that the present section (1917, c.20,s.13) should be amended to provide for a uniform deferment of five years in the case of all newly contracting municipalities.

The application of the deferment period, moreover, should be carefully noted. The Commission is authorized to relieve municipalities of the "payment of any sum on account of the sinking fund account for the first five years during which payments are made to the Commission by the corporation under such contract". The authority to

defer the collection of sinking fund instalments is strictly limited to the first five years after which a municipality begins to make payments under its contract. Thus a municipality which commences operations for example in the year 1911, may be relieved of sinking fund payments up to and including the year 1916, but subsequent to 1916 there was no authority to defer the collection of sinking fund instalments.

Our Accountants advise that the Commission has adopted a uniform policy which would appear to be based upon a misapprehension of the application of the deferment period of the Act. In the ordinary course of events, after the initial capital investment in the works of a system serving a group of municipalities, extensions and additions are made to those works from time to time. It often appears that the extensions and additions represent a larger capital investment than the original works. It appears that the Commission not only defers for five years the payment of sinking fund instalments in respect of the original capital investment, but that it also defers for five years the payment of sinking fund instalments in respect of the capital invested in additions and extensions. Thus, for example, a municipality which commenced to take power in 1916 is not required to pay sinking fund in respect of the original capital investment until the year 1921;

if the system serving it is extended in the year 1917, it does not pay sinking fund in respect of the capital investment in such extensions until the year 1922; and if further extensions are made in the year 1921, it is not required to pay sinking fund in respect of that capital investment until the year 1926.

This pyramiding of deferment periods beyond the first five years during which a municipality commences to take power is not only clearly unauthorized by the Act, but it does not appear to comply with the whole spirit of the Statute. The deferment section was a salutary provision designed to relieve newly contracting municipalities for a 5-year period in order to give them a chance to build up their power loads and get into a position to meet all the charges entering into the cost of power. It cannot be suggested, however, that a wealthy and large municipality such as the City of Toronto, which has been taking power for some 12 years, cannot afford to commence to pay sinking fund instalments in respect of capital invested in extensions in one year, in the following year. Under the policy adopted by the Commission, the City of Toronto is relieved of the payment of sinking fund instalments in respect of capital invested in extensions in the year 1922 until the year 1927. It is recommended that the policy of the Commission in this regard should be

reviewed by the Government and that the Act should be amended to authorize the present practice of the Commission, or, in the alternative, the Commission should be instructed to comply with the existing law.

(b) Form of Contract.

The standard form of contract between the municipalities and the Commission contains the following clause:

> "This agreement shall remain in force for thirty years from the date of the first delivery of power under this contract."

It is quite obvious that the contracts between the municipalities and the Commission will lapse many years before the municipalities have repaid to the Province the sums advanced for the purposes of the works serving them. If the 5-year deferment provision of the Act were strictly complied with and the municipalities relieved of the payment of sinking fund instalments during the first five years of their contracts, the contracts would lapse, leaving to be paid thereafter five of the thirty annual sinking fund instalments, but as noted in the preceding paragraph, the sinking funds are established in respect of additions and extensions on the 30-year basis from the date upon which such additions or extensions come into operation and the 5-year deferment provision is applied not only to the original capital investment but to the investment in such additions and extensions. For example, the

contract between the City of Toronto and the Commission expires in the year 1936. The city, admittedly without authority, was not required to pay sinking fund instalments in respect of the capital invested in the works up to 1916, until the year 1916. These instalments will not be completely paid until the year 1946, or eight years after the contract has lapsed. Additions and extensions have been made to the works serving the city in almost every year since 1916. Thus, for example, supposing $1,000,000. to have been invested in additions and extensions in the year 1921, the City of Toronto will not be required to commence sinking fund instalments in respect of the capital invested in these extensions until the year 1926, and the last instalment will, therefore, not be payable until the year 1956, or 16 years after the contract between the City and the Commission will have lapsed.

It is suggested that legislation should be enacted varying the contracts between the municipalities and the Commission to conform to whatever policy with regard to the collection of sinking funds and the deferment of sinking fund instalments is approved by the Government. In any event, it is urged that care should be taken to see that the terms of all contracts are expressly varied by Statute to conform with any changes in the general law

and that thereafter the practice and the policy of the Commission should be clearly within the authority granted by the Legislature.

(c) Thunder Bay System.

Although the Power Commission Act contemplates a thirty-year sinking fund period, subject to the provisions respecting deferment (page 8), the contracts with the municipalities on the Thunder Bay System are a notable exception to the general rule. The contracts between Port William and Port Arthur and the Commission provide, in terms, for a forty-year sinking fund period. Inasmuch as each contract was confirmed by the Legislature (1918,c.14,s.19), the question of their validity is not open to question.

The Act not contemplating sinking fund periods exceeding thirty years, there is no authority in the Act to defer the collection of payments on account of sinking fund from these municipalities. However, to quote this Commission's Interim Report on The Thunder Bay System (page 11), "In the statement of expenditure no charge whatever is made for sinking fund". Even if the Act were amended to make the five-year deferment provisions uniformly applicable, it would appear that the situation would not be sufficiently relieved. Authority must be secured by special legislation, relieving the Thunder Bay municipalities from sinking fund payments until such time as the receipts from sale of power

enable them to make them. It is urged that this authority should take the form of special legislation, and not that of an amendment to the general law, because it should be made clear that such consideration is unusual arising out of inevitable circumstances, and not one, in any case, to be regarded as a precedent. At the same time the contracts should be varied accordingly.

(d) Central Ontario System.

The Central Ontario system, being owned by the Province, the general provisions of the Power Commission Act requiring the establishment of sinking funds are not applicable. As a matter of fact the Commission has established sinking funds on a thirty-year basis in connection with the Bruton pulpwood areas and certain other works representing a capital investment of $418,760.84, but no sinking fund provision is being made with regard to the balance of the capital investment, viz:- $11,140,843.10. Debentures in the amount of $8,350,000.00 mature in 1926 and no sinking fund has been provided for their retirement.

The establishment of sinking funds in connection with the Central Ontario System is bound up with the broad question of the relation that the System bears to other Hydro Systems, and its eventual ownership. These are questions of Government policy and are discussed at length in this Commission's report on The Central Ontario System.

(c) Essex and Sherold Systems.

These so-called systems are not "systems" within the meaning of section 23b of the Power Commission Act. No "group of municipalities" is responsible for the capital investment and the general relations between municipalities, Commission and Province is not contemplated by the Act. As regards the establishment of sinking funds, these systems present a special problem. The Commission contends that the guarantee of bonds by the Province does not constitute an advance within the meaning of Section 23 of the Act, and that the general provisions of the Act respecting the investment of sinking funds and delivery of securities to the Treasurer of Ontario do not apply.

Accordingly, although the Commission has established sinking funds in these cases, as described in the respective reports relating thereto, this, it is claimed, has been done in accordance with sound business principles rather than pursuant to any obligations imposed by the Act. The result has been that the sinking fund periods vary according to the nature of the obligations maturing in respect of each particular work, leaving room for criticism as to the adequacy of the provision in certain cases.

In the case of the Essex System, where municipalities served have no contractual interest, there had been, up to October 31st, 1921, owing to the heavy loss sustained by the

(d) Sound and Thorough Systems.

These so-called systems are not "systems" within the meaning of Section 255 of the Power Commission Act. So "plans of municipalization" in Saskatchewan for the capital investment and the general financial situation municipalities, commission and Provinces is not contemplated by the Act. In another the wasteliness of sinking funds, these systems present a special problem. The commission contends that the guarantee of bonds by the province does not constitute an advance within the meaning of Section 25 of the Act, and that the general provisions of the Act respecting the investment of funds by municipalities in the Treasurer of Ontario do not apply.

Accordingly, although the Commission has authorized sinking funds in these cases, as described in the respective reports relating thereto, this, it is claimed, has been done in contravention of the Act. Some municipalities rather that payment to any obligations issued by the Act. The result has been that the sinking fund payments only contribute to the scheme of the municipalities retaining in their hands the money which the municipalities borrowed to the extent of the provision in certain cases.

In the case of the Essex Township, where municipalities carried out an constructed improvement, since the year, 1, 2 or 3 years, but, after the year 1927, which is the year the municipalities

System during the first two years of operation, the amounts credited to renewal and sinking fund account created a large deficit in the balance sheet of the System.

During the year ending 31st October, 1922, profits earned substantially reduced the deficit, thus making available moneys for the sinking fund reserves already established on a basis sufficient to retire the outstanding bonds of the Commission at maturity, i. e. on a forty-year basis in respect of $200,000. and a ten-year basis in respect of $26,000. On the other hand, the Commission has not established any sinking fund in respect of $163,810.15 expended by the Commission since acquisition of the System on improvements and additions to the works, and to date has expressed no intention of so doing.

In respect of the establishment of sinking funds of the Essex System, Mr. Clarkson states as follows:

> "With the purchase price of the Essex System paid for by the issue of bonds of the Commission guaranteed by the Province of Ontario, the provisions of the Power Commission Act do not appear to require that sinking funds be established to meet the same - this for the reason, as I am advised by legal counsel, that the guarantee of such bonds by the Province does not constitute an advance within the meaning of Section 23 of the Act. With no municipalities under contract with the Commission to pay cost for power delivered by the Essex System, there would also appear to be no provision in the Power Commission Act requiring the establishment of sinking funds for repayment of the advances by the Province and the Commission to the Essex System".
> 1921 Report, p.63.

The Thorold system presents the same problem although happier results have obtained to date. As of October 31st, 1923, profits earned by the System and appropriated to sinking fund account were more than sufficient to retire the obligations incurred. In 1920, the only municipality on the System, viz: Thorold, entered into a standard contract with the Commission, agreeing to pay sinking fund instalments as part of the cost of power; all other customers of the System are on a flat rate basis.

It is suggested that the Act should be amended to require the Commission to establish sinking funds in the case of works purchased with the proceeds of bonds issued by the Commission and guaranteed by the Province in order that the Province may receive security for its liability upon such bonds on a somewhat similar basis as it receives in the case of advances made for the cost of works to serve municipal corporations under power-at-cost contracts, within the meaning of the Act. Further, the Act should require the Commission to establish sinking funds to repay advances of the Province in respect of systems such as the Essex System.

(f) Niagara System.

The sinking funds established in connection with the works of the Niagara System are on an entirely different basis from that obtaining on all the other systems of the Commission. The Commission has interpreted the provisions

of the Ontario Niagara Development Act, 1917, as varying the general provisions of the Power Commission Act and the terms of the contracts with municipalities to the extent of authorizing the Commission to establish sinking funds in such amounts and on such bases as it may deem necessary and proper. The representatives of the Commission have stated that such was the intention of the Legislature, inasmuch, however, as the only estimates submitted by the Commission to the Government prior to the passing of the Development Acts, figured sinking funds on a thirty-year basis, it is not clear how the Legislature could have contemplated sinking funds on any other basis. In this connection it should be noted that Section 5 of The Ontario Niagara Development Act, 1917, the only section in either Act referring to sinking funds, provides for the annual adjustment and apportionment of the cost of power "as provided by the Power Commission Act".

The nature of the sinking funds accumulated and the policies of the Commission in respect thereto are commented upon in detail in this Commission's report on the Niagara System. It is necessary, however, to note here the salient features of that report in respect to sinking funds.

The capital investment in the Niagara System as of 31st October, 1922, was more than $134,000,000. or 80% of the total investment in all undertakings of the Commission. Of this

amount, some $85,000,000., or 63% of the total investment, is represented by cash advances from the Province and a further $36,000,000., or 27%, is represented by debentures issued or assumed by the Commission and guaranteed by the Province.

Less than $26,000,000., or about 19% of the capital investment in the system, is repayable on a thirty-year sinking fund basis contemplated by the Power Commission Act; the balance will be repaid within periods ranging from thirty-seven to forty-five years if the expressed intentions of the Commission with regard to the Queenston-Chippawa development are adopted.

Our Accountants have made a theoretical computation which indicates that at the expiration of the thirty-five-year period contemplated by the Power Commission Act the various sinking fund accounts will be short a matter of almost $39,000,000., or about 30% of the total capital investment. To view the situation from a different angle,- if the whole capital investment were on a thirty-year sinking fund basis, the municipalities would be required to pay an additional annual charge of about $000,000. It is obvious that the direct effect of prolonging the sinking fund period is to decrease the annual cost of power to municipalities and to extend the time within which the advances of the Province will be repaid.

In connection with the purchase of The Ontario Power Company, the Toronto Power Company and their subsidiaries, the Province guaranteed bonds of the Commission to the amount of $11,819,000., and guaranteed the repayment of outstanding obligations of the companies outstanding at October 31, 1922, in the amount of $23,074,631.95, or a total of $34,894,631.95. In respect of these obligations the Commission has taken the attitude noted on page 19 hereof in connection with the sinking funds on the Essex and Thorold Systems, namely; that such Provincial guarantees do not constitute an "advance" within the meaning of the Power Commission Act. Our Accountants advise that in respect of the outstanding bonds of The Ontario Power Company assumed by the Commission there does not appear to have been any direct provision made out of revenue for sinking fund purposes. Our Accountants advise, with regard to the investment in the works of the Toronto Power Company and its subsidiaries, that the Commission has formally fixed the sinking fund period of forty years to repay the bonded indebtedness on these works.

It is submitted that if there is any doubt that the provisions of Section 23 of the Power Commission Act apply to works constructed or acquired under the Ontario Niagara Development Act, 1917, and that the municipalities, pursuant thereto, are required to repay the advances of the Province within thirty years irrespective of deferment periods, such

doubt should be removed at the next Session of the Legislation by declaratory legislation.

It is further submitted that the legislation should be enacted making provision for the establishment of sinking funds on a uniform basis sufficient to repay the total capital investment in works of the Commission, irrespective of the source of the funds applied to such capital investment.

3. Investment.

1. Present Law

The Commission is required to invest sinking funds in provincial securities and deposit same with the Treasurer of Ontario as security for the repayment of advances.

> 15.(1) "All sums received by the Commission from municipal corporations and others on sinking fund account shall be invested by the Commission in securities of the Province of Ontario, and also all interest accruing thereon; and such securities shall be delivered by the Commission to the Treasurer of Ontario as security for repayment of the advances made by the Province to the Commission."

2. Historical Sketch

Prior to 1916, when the present law was enacted, all sums received by the Commission in respect of sinking funds were required to be paid over directly to the Treasurer of Ontario.

bonds should be removed as the more passion of the legislation by declaratory legislation.

It is further submitted that the legislation should be worded among provision can be particularized by stating that as a minimum basis sufficient is meant the implicit original investment in works of the Commission, irrespective of the source of the funds applied to such initial investment.

4. Interest.

i. Trust Law

The requirement is required in trust existing funds in provincial securities and deposit made with the Treasurer of Ontario as security for the repayment of advances.

ib.(j) "All sums received by the Commission from municipal corporations and others on account fund account shall be invested by the Commission in securities of the Province of Ontario, and also all interest earned thereon shall be credited to the Treasurer of Ontario as security for repayment of the advances made by the Province to the Commission."

5. Electrical Union

Prior to 1914, when the power act was enacted, all sums received by the Commission in respect of sinking funds were required to be paid over directly to the Treasurer of Ontario.

15. "All sums received by the Commission on account of sinking fund or interest shall be accounted for and paid over to the Treasurer of Ontario to be applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act" 1906,c.15,s.15; 1907,c.19,s.21,redrafted; R.S.O.1914,c.39,s.15; 1916,c.19,s.7 - underlined words added; 1918,c.14, s.7 - repealed.

3. Comment

Our Accountants report that since the enactment of Section 15 (1) - (ante) - in 1918, moneys received by the Commission on sinking fund account have, from time to time, been invested in Provincial securities and that such securities have been delivered to the Treasurer of Ontario.

It is also reported, however, that the Treasurer of Ontario was holding on deposit, as of 31st of October, 1921, an amount of $608,284.91 ($638,699.16 as of October 31st, 1922) in respect of sinking fund moneys paid over by the Commission prior to 1918.

The Auditor of the Commission, Mr. Clarkson, criticized the failure of the Government to invest these funds in Provincial securities in each report issued by him since 1918. The following quotation from his report for the year ending 31st October, 1921, is typical:

"Under the provisions of Section 15 of the Act the $608,284.91 deposited with the Treasurer of Ontario should be invested in securities of the Province, and to October 31st, 1921, this had not been done."

While it may have been the intention of the Legislature that all sinking fund moneys theretofore or thereafter

collected and in the hands of either the Commission or the Province should be invested in Provincial securities, the provisions of Section 15 (1) were not declared retroactive, and, further, while requiring investment of sinking funds by the Commission, it makes no reference to investment of sinking funds by the Province. It would appear, therefore, that all sinking funds paid over to the Province prior to the coming into force of the amendment of 1918 are required to be "applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act", according to the provisions of old Section 15 (vide p.26).

Our accountants report that it would be impossible without changing the basis of collection for the Province to apply this amount of $608,284.91 in the retirement of securities inasmuch as it was paid on a sinking fund basis, and the interest must be allowed to accumulate for the unexpired portion of the sinking fund period; and, further, that the municipalities suffer a considerable loss annually by these moneys being held by the Province (allowing, it is understood, 5%), instead of being invested in Provincial securities at a substantially higher rate of interest. However, there would appear to be neither authority nor direction in the Act as it is at present requiring the Province to invest these moneys in Provincial securities. At the time these moneys were paid to

the Province, the Act directed that they be applied in the retirement of Provincial securities.

It is suggested that Section 15 (1) should be amended to require all moneys therefore paid over to the Province on sinking fund account to be invested by the latter in Provincial securities.

It is to be noted that, while the Central Ontario System is owned by the Province and not operated under the provisions of the Power Commission Act, the Commission has provided a sinking fund amounting to $28,665.54 at 31st October, 1921, in respect of certain works, which moneys have not been paid over to the Province but were, at October 31, 1922, being held in the custody of the Commission.

With regard to the disposition of sinking funds collected by the Commission in connection with The Ontario Power Company and the Essex and Thorold Systems, our Accountants advise that they are being duly invested in Provincial securities but that the Commission takes the position that the requirement of Section 15 (1) as to the delivery of "such securities ... to the Treasurer - as security for repayment of the advances" does not apply to those securities. With the enactment of the amendments heretofore suggested declaring the guarantee of bonds by the Province to be an "advance" within the meaning of the Act, and requiring the Commission to establish sinking funds to retire such bonds, the securities purchased therewith will be required to be delivered to the

Province.

If the view that the provisions of the Power Commission Act have no application to works constructed or acquired under the Development Acts, except where certain sections are specifically declared applicable, is sustained, the Commission is not required pursuant to section 18 (1) to invest its sinking funds collected in respect of such works in securities of the Province or to deliver such securities to the Province as security for the repayment of the moneys advanced to construct or acquire such works.

I N T E R E S T

1. Present Law

(a) Interest Payable by Commission to Province

The Commission is required to pay annually to the Treasurer of Ontario interest on all cash advances received from the Province.

> 15. (1a) "The Commission shall pay to the Treasurer of Ontario annually interest on the indebtedness of the Commission to the Province for moneys advanced to the Commission by the Province as may be from time to time determined by the Lieutenant-Governor in Council as sufficient to reimburse the Province the full amount of interest paid by the Government on moneys raised for the purposes of the Commission and the charges incurred by it in providing such money." 8 Geo.V, c.14, s.7.

(b) Interest Payable by Municipalities to Commission

Each municipality receiving power from the Commission is similarly required to pay annually to the Commission its proportion of the interest charges upon the moneys expended by the Commission.

> 23. .... "the Corporation shall annually pay to the Commission its proportion as adjusted of (a) interest at the rate of four per centum per annum upon the moneys expended by the Commission on capital account ... and upon working capital - and
> (c) ... such sums as the Lieutenant-Governor in Council may direct to cover the difference between the four per cent. interest charged on the money so expended on capital account, for working capital, and all charges and expenses of providing such money". 1906,c.15,s.18; 1907,c.19,s.18, redrafted; R.S.O.1914,c.39,s.23; 1915,c.19,s.11; 1918, c.14,s.11.

1. Historical Sketch A. Period 1907-1918.

(a) Interest Payable by Commission to Province.

Prior to the enactment of The Power Commission Act 1918 (1918,c.14) the Commission was not, per se, under any direct liability to pay interest on cash advances to the Province; it was merely required to pay over to the Treasurer of Ontario the moneys received from the municipalities on account of interest under the provisions of Section 25.

> 15.(1) "All sums received by the Commission on account of sinking fund or interest shall be accounted for and paid over to the Treasurer of Ontario to be applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act". 1907,c.19,s.21; R.S.O.1914, c.39,s.15; 1916,c.19,s.7. (The underlined words were inserted by 1916 c.19,s.7).

Thus from 1907 until 1916 all sums received by the Commission were required to be paid over to the Treasurer of Ontario. From 1916 to 1918 the sums required to be paid over were restricted to sums received on account of sinking fund or interest.

(b) Interest Payable by Municipalities to Commission.

Prior to the enactment of The Power Commission Act, 1915, Section 11 of which amended Clause C of Section 25 by adding at the end thereof the words - "and such sums as the Lieutenant-Governor in Council may direct to cover the difference between the four per cent. interest charged on the money so expended on capital account and all charges and expenses of providing such money". - which amendment was declared to apply to any money

provided since the 31st October, 1914, each municipality was required to pay annually to the Commission its proportion of "interest at the rate of four per centum per annum upon the money expended by the Commission on capital account in the construction or purchase of the works". Hence, prior to 31st October, 1914, the municipalities were required to pay a flat rate of 4% on the capital expenditures of the Commission, and, until 1918, the Commission was required to pay over such collections to the Province.

On the 31st October, 1917, an Order-in-Council was passed, pursuant to the amendment of 1918 above referred to, requiring the municipalities to pay for the year 1917 an additional $51,290.11 being "the difference between the 4% interest ... and all charges and expenses of providing the moneys" advanced by the Province during the three year period ending 31st October, 1917. This amount of $51,290.11 was $65,132.44 (P.W.Report p.18) less than the difference between the 4% rate and "all charges and expenses of providing such money" for the said three years. If it be the intention that the Province should be reimbursed the full cost for the three years of providing money subsequent to 31st October, 1914, it would appear that the Lieutenant-Governor in Council may at any time pass an Order-in-Council redetermining the balance payable by municipal corporations in respect of interest on moneys advanced during this three-year period.

B. Period 1916-1923.

The amendments made to the Act by The Power Commission Act, 1916, completely altered the relationship between municipalities, Commission and Province. Subsection 1 of Section 15 quoted on page 31 was repealed and the present law (vide p.30) enacted. Instead of the Commission acting as a middleman between the municipalities and the Province, collecting interest monies under Section 23 and paying them over to the Province under Section 15, the Commission is directly responsible for reimbursing "the Province the full amount of interest paid by the Government on moneys raised for the purposes of the Commission and the charges incurred by it in providing such money".

3. Comment

The rate of interest on cash advances payable by the municipalities under Section 23 and by the Commission under Section 15 (1a) is required to be determined by the Lieutenant-Governor in Council. The only Order-in-Council pursuant thereto was passed on 31st October, 1917, dealing with advances to that date. No Order-in-Council has been passed since the enactment of Section 15 (1a) in 1916.

In the absence of direction by Order-in-Council, the unauthorized practice has developed whereby the Treasury Department computes the average rate of interest on all borrowings of the Province each year and renders an account in accordance therewith

to the Commission. Only one instance has come to our attention of the Commission having failed to meet the account so rendered, and that was in the case of advances made for the development at Cameron Falls in connection with the Thunder Bay System. The circumstances of that case have been dealt with in detail in this Commission's Interim Reports on The Thunder Bay System and Interest Payable on Funds Advanced to the Hydro-Electric Power Commission by the Province of Ontario.

The Auditor, Mr. Clarkson, advises that the Commission has not only collected from the municipalities the sum of $51,290.11 directed by the Order-in-Council of 31st October, 1917, but also interest charges in excess of 4% in each year since 1917. In the absence of further Orders-in-Council under clause C of Section 23 this practice is clearly unauthorized.

It would seem obvious that, if the principles of the present law with regard to the financing of the work of the Commission in general, and the payment of interest on funds advanced in particular, are accepted, the procedure contemplated by the Act should be strictly followed and Orders-in-Council passed at least annually determining the rate of interest payable.

But it is urged that there is no need for two Orders-in-Council. In fact, under the present scheme of the Act it is impracticable for the Government to determine, as provided in Section 23, the amount of interest in addition to the 4% rate payable by the municipalities to the Commission. For example, interest

during construction of a work is included in the capital cost of the work and is not payable as interest by the municipalities. The Act leaves the adjustment and apportionment of all charges in the discretion of the Commission. Accordingly it is recommended that Section 23 should be amended to eliminate the necessity of passing an Order-in-Council fixing the amount of interest, in addition to 4%, payable by the municipalities. To this end the following is suggested.

(1). Amend clause (c) of Section 23 by striking out the words added by 1915, c.19, s.11, viz., "and such sum as the Lieutenant-Governor in Council may direct to cover the difference between the four per cent. interest charged on the money so expended on capital account, and all charges and expenses of providing such money."

(2). Repeal clause (a) of Section 23 and substitute therefor the following:

> "(a) Interest at the rate of four per centum per annum upon the money expended by the Commission prior to October 31st, 1914, in the construction or purchase of works; and thereafter at a rate sufficient to reimburse the Commission the interest and all other charges required to be paid by the Commission to the Province under the provisions of sub-section (1a) of Section 15."

Attention is further drawn to the necessity of amending the Act to authorize the Government to defer the payment of the arrears of interest (amounting to $360,915.75 at 31st October, 1922), payable on advances for the purposes of the Cameron Falls development.

P A Y M E N T S

by

M U N I C I P A L I T I E S

A. Power Accounts - When Payable.

1. Present Law

Municipalities are required, except as hereinafter noted, to pay their power accounts with the Commission in full annually. (vide Section 23).

Payments on account of sinking fund may be deferred at the discretion of the Commission for the first five years after a municipality commences to take power. (vide "Sinking Funds").

During the first three years after a municipality commences to take power, the Commission is authorised to extend to any date (subject to the payment of interest) the time for payment of accounts accruing due during such three years.

> 23a. "The Commission may from time to time during the first three years after any municipality shall first begin to take power from the Commission extend the time for payment of the sums payable by any municipality or any part thereof, and such municipality shall pay to the Commission interest on the amount which may be in arrear or for the payment for which time is extended until the payment therefor, at such rate not exceeding seven per cent. per annum as the Commission may determine". 1918, 8 Geo.V. c.14,s.12.

2. Historical Sketch

The provision as to the annual payment of power bills

contained in Section 23 is in substantially the same form as when first enacted in 1906. (1906,c.15,s.15).

The history of the provision respecting deferment of sinking fund payments is set out in the section headed "Sinking Fund".

Section 23a as to the three-year extension was originally enacted in 1918 and has not been amended subsequently.

3. Comment

The requirements of the Act as to the annual payments of accounts by municipalities are implemented by the provisions contained in their contracts with the Commission whereby they agree to pay in twelve (12) equal monthly instalments their respective proportion of interest, sinking fund, and the other charges enumerated in Section 23.

Our Accountants advise that in practice the Commission estimates the charges and fixes an interim power rate for each municipality at the commencement of each year or as often as may be. Accounts are rendered monthly in accordance with this interim rate. At the close of the fiscal year, the charges entering into the cost of power are adjusted and apportioned, and a so-called "thirteenth bill", which may be either a debit or a credit account is rendered.

The practice of rendering a "thirteenth bill" would appear to be sufficient compliance with the Act, if, as a matter of fact, debit bills so rendered were paid. Our Accountants advise, however, that in some cases the municipalities do not pay such bills in cash

and that the Commission merely increases the interim rates until such time as the deficit is wiped out. A special provision (Section 6d) was passed to cover the disposition of surpluses reported to the municipalities in the form of credit bills. ("Surplus Funds").

The following is extracted from this Commission's Report on The St. Lawrence System at page 11: - "This practice (ante) appears to us inconsistent with the general policy of the Act which is to collect promptly the cost of power supplied during each year. The non-collection of yearly adjusted balances due for power to meet the annual costs necessitates the employment by the Commission of funds in its hands from other sources to pay such costs, which we consider an improper procedure".

It is suggested that in future the Commission should either insist upon the prompt payment of adjusted debit balances or secure legislation validating the policy of increasing interim rates in subsequent periods to cover accumulated deficits in prior periods.

Prior to 1912 when Section 23a (vide p.36) was enacted, there was no authority in the Act allowing the Commission to extend the time for payment of power bills even in the case of municipalities newly contracting. Under such conditions it is not surprising that the Commission assumed the authority. In his first Draft Report (1916) Mr. Clarkson said "The Commission has found it impracticable to compel newly contracting municipalities

to make full payment annually of their share of the cost of operating and maintaining the System, as provided in the Act".

The enactment of Section 23a was apparently intended to enable the Commission to lawfully relieve individual municipalities in special cases of making their annual payments in full while their loads were being built up. Our Accountants advise, however, that pursuant to section 23a the Commission has adopted the policy of reducing annual payments during the first three years in the case of all municipalities. It is noted in connection with the deferment of sinking fund payments how a similar policy developed from permissive legislation obviously intended to be confined to special cases. (vide "Sinking Funds").

It is submitted that the adoption of such policies is directly responsible for the number of "open accounts" on the books of the Commission. The municipalities have learned to expect as a matter of right that they will be relieved of sinking fund payments for the first five years and entitled to an extension of time for payment of their annual power bills during the first three years. Under such circumstances one would expect to find municipalities in default in the payment of their power bills at the expiration of the three and five-year credit periods. Our accountants advise that prior to 31st October, 1932, almost every system included municipalities in default in the payment of their power bills. During the current year, however, the number of municipalities in default is reported to have been substantially reduced, in a measure due to credits to municipalities of

sums transferred from renewal reserves following a retroactive reduction of depreciation rates.

This Commission's reports upon The Niagara System, The Wasdell's System, and The St. Lawrence System draw attention to the fact that in the case of several municipalities debit balances have been accumulating from the first year of operation and that some have been incurred subsequent to the three-year limit in which municipalities are allowed to defer amounts owing to the Commission in respect of the cost of power. In other words, the Commission by their failure to collect these accounts have extended the time for payment for periods not contemplated by the Act.

It is suggested that if such policies of the Commission meet with the approval of the Legislature, Section 23a should be amended and all newly-contracting municipalities relieved for a period of three years from full payment of power bills accruing therein, and the Commission authorised to extend such relief in special cases to subsequent years. In the alternative the extension authorised by Section 23a should be confined to special cases, and prompt payment in full should be insisted upon of accounts incurred after the third year.

As noted elsewhere, special provision will be required to meet the situation in the Thunder Bay System where several years must elapse before the municipalities can possibly meet the charges normally included in the annual power bills.

B. Construction Accounts

1. Present Law

Section 15a (2) authorizes the Commission to construct works and distribution systems for municipalities which have entered into a contract with the Commission for a supply of power and to collect the cost of same.

> 15a (2) "The Commission may undertake and carry out the installation, construction, erection or purchase of supplies for any plant, machinery, wires, poles and other things for the transmission, distribution, supply or use of electrical power or energy for light, heat or power purposes, by a municipal corporation or commission which has entered into a contract with the Commission for the supply of electrical power or energy, and the Commission may charge and collect from such corporation or commission the cost of any work done or service rendered by the Commission, its officers, servants or workmen under this subsection". 6 Geo.V.,c.19,s.8, part.

2. Historical Sketch

This provision was enacted in 1916 and declared retroactive to 31st October, 1910, (1916,c.19,s.8, part.) It has not been amended.

3. Comment

The Commission's Auditor states that the Commission anticipated the enactment of this provision, and that accounts were incurred with respect of the construction of local works and distribution systems as early as 1910. In his first Draft Report (1916,p.39), Mr. Clarkson noted that "amounts owing to the Commission for construction work should be collected more promptly". In his report for 1918 (p.32) he pointed out that "On 31st

1. [illegible]

a. [illegible]

Section 3b, (3) outlines the conversion to [illegible] mains and distribution systems for municipalities using gas turbine into a combined cycle [illegible] in a [illegible] of power and to collect the cost of same.

[illegible]

c. [illegible]

This provision was removed in 1970 as [illegible] [illegible] is also [illegible] [illegible] [illegible]. It has not been amended.

3. Comment

The Committee's counsel stated that the [illegible] [illegible] the examination of this provision, and that amendments were incorrect with respect to the [illegible] or light [illegible] and distribution systems as early as 1970. In this final report [illegible] (1976, p.-23), Mr. Diamond noted that "amendments owing to the [illegible] missing for communication work should be collected more promptly". In his report for 1980 (p.-35) he pointed out that "on Nine [illegible]

October, 1917, $564,137.66 was due to the Commission in respect of municipal construction accounts -- and --- that municipalities should be required to make adequate arrangements for payment to the Commission in respect of the construction of works before such work be undertaken by the Commission".

Our Accountants advise that recently the Commission has been more prompt in its collection of such accounts. There would appear, however, to be an infirmity in the statute in that there is no time definitely fixed for the repayment of such expenditures incurred by the Commission and no provision for the payment of interest on arrears as in the case of annual power accounts rendered under Section 23a. It is realized that under the present practice uncontrollable delays in the marketing of debenture issues may at times render it impossible for municipalities to pay such large accounts promptly, but it is suggested that if the Act were amended requiring municipalities to sell their securities before the work commenced and to make part payments on account as the work proceeds and to pay in full within 30 days of the completion of the work as certified by engineers of the Commission, with a provision for interest on payments in arrear as in Section 23a, considerably less difficulty would be incurred in closing out accounts with municipalities at the close of each fiscal year.

S A L A R I E S

A. Commissioners

1. Present Law

The Chairman of the Commission is paid an annual salary of $4,000. out of the Consolidated Revenue Fund.

> 5.-(1) "The Chairman of the Commission shall be paid an annual salary of $5,000. per annum, and the same shall be a charge upon and payable out of the Consolidated Revenue Fund of Ontario". 1906,c.15,s.4; 1907,c.19,s.5; 1912,c.14,s.2, repealed; R.S.O. 1914,c.39,s.5(1); 1915,s.2, repealed.

The Chairman and each member of the Commission may be paid an annual sum to be determined by the Lieutenant-Governor in Council, but not exceeding in all $15,000. to be paid by the municipalities as part of the cost of power.

> 5.-(2) "The Chairman and each of the other members of the Commission may be paid such annual sum for their services as members of the Commission as may be determined by the Lieutenant-Governor in Council, out of moneys to be provided as set out in Clause C to Section 23 of this Act".
>
> 23. ...."the Corporation shall annually pay to the Commission its proportion as adjusted by the Commission of
> (c) ... such sum not exceeding $15,000 per annum as the Lieutenant-Governor in Council may direct to be paid to the Chairman and other members of the Commission as remuneration for their services in addition to any sum payable to them out of the Consolidated Revenue Fund". 1914,c.16,s.4.

The payment of salary or other remuneration to members of the Commission is expressly declared not to disqualify such members from sitting and voting as members of the Legislature.

5.-(3) "Notwithstanding anything contained in the Legislative Assembly Act the election of the Chairman or of any other member of the Commission, if a member of the Assembly, shall not by reason of the payment to him of any salary or other remuneration under this Act, or the acceptance thereof be avoided, nor shall he vacate or forfeit his seat or incur any of the penalties imposed by that Act for sitting and voting as a member of the Assembly". 1912,c.14,s.2, part; R.S.O.1914,c.59,s.5 (2); 1915,c.19,s.2, part. repealed.

2. Historical Sketch

Prior to October 31st, 1911, the provisions of section 4 of the original Act of 1906 remained in force.

4."The member or members of the Commission other than any member of the Executive Council shall be paid such salary or other remuneration as may be fixed by the Lieutenant-Governor in Council out of such moneys as may be voted by the Legislature for that purpose". 1906,c.15,s.4; 1907,c.19,s.5.

At the session of 1912 this section was repealed and the following substituted therefor:

5.-(1) "The Chairman of the Commission shall be paid out of such moneys as may be voted by the Legislature for the general purposes of the Commission, such annual salary or other remuneration not exceeding Six Thousand Dollars ($6,000) per annum as may be determined by the Lieutenant-Governor in Council.

(2) Notwithstanding anything contained in the Legislative Assembly Act, the said Chairman shall not by reason of such salary or remuneration or the acceptance thereof avoid his election or vacate or forfeit his seat or incur any of the penalties imposed by the said Act for sitting and voting thereafter as a member of the Legislative Assembly.

(3) The members of the Commission other than the Chairman or a member of the Legislative Assembly shall be paid out of such moneys as may be voted by the Legislature for that purpose, such annual salary or other remuneration as may be fixed by the Lieutenant-Governor in Council.

(4) This section shall take effect as from the thirty-first day of October, A.D. 1911. 1912,c.14,s.2.

The Section appeared in the Revised Statutes of Ontario 1914, in the same form. A minor amendment was made to Subsection 2, and Clause (c) of Section 23 was amended, to include the provisionsheretofore quoted, at the session of 1914.

In 1915, the whole of Section 5 was again repealed and the present law enacted with the provision that Subsections 2 and 3 should take effect as from 1st November, 1914, and apply to the services of any member of the Commission since that date.

3. Comment

Prior to November 1st, 1911, no remuneration was paid to the the Chairman or to any member of the Commission. Throughout this period the Chairman was a member of the Legislature, and, in the absence of special legislation, he would have been disqualified by the Legislative Assembly Act from sitting and voting as a member of the Assembly had he accepted any salary or other emolument from the Crown.

In 1912, the salary of the Chairman of the Commission was fixed by the Legislature at $6,000. retroactive to 1st November, 1914, and a special provision enacted that the acceptance of such salary by him should not disqualify him from retaining his seat in the Legislature. The Auditor reports that Sir Adam Beck has accepted the salary of $6,000. since the 1st of November, 1911. This salary is a direct charge against the Consolidated

(4) Mr. Hughes would have agreed to this and thirty-first day of October, A.D. 1911. J.J.M.,O.I.M.,O.C.

The Treasury expenses in the Parliament Division of Ontario 1911, in the year ended, a minor amendment was made to the position of, and Clerks (or) of Committee of the Assembly, to include the preliminary-commercial course, as an essential of life.

In 1912, the wish of Section 8 was again repeated and the present law enacted with the provisions that Subsections 8 and 9 should take effect on 1st January, 1913, and apply to the salaries of any owner of the Committee clerk that year.

5. Clerks

Prior to December 1st, 1911, no measurements was kept to the Clerkship or to any member of the Committee. Throughout this period the Chairman was a member of the Legislature, and in the absence of special legislation, he would have his qualified by the Legislative Assembly was from sitting and voting as a member of the Assembly and be accorded his salary as other amolument from the Crown.

In 1911, the salary of the Clerkship at the Committee was fixed by the Legislature at $2,000. Retroactive to 1st January, 1912, and a special provision enacted that the salary at each salary by his should be diminished by from receiving his seat in the Legislature. The Minister reports that in 1912 the salary of the Clerkship was the 1st January, 1911. This salary is a direct charge against the Consolidated Revenue Fund and therefore the salary of $2,000. since the 1st of January, 1911, and a special provision enacted that the salary at the Clerkship of the Legislature.

Revenue Funds and is not repayable by the municipalities.

In 1914, Section 25 was amended to require the municipalities to provide a sum not exceeding $15,000. to be paid to the Chairman and other members of the Commission in addition to any sum payable out of the Consolidated Revenue Funds. Pursuant thereto an Order-in-Council was passed on the 9th day of October, 1914, directing that the Chairman be paid as from 1st June, 1914, an annual sum of $6,000. in addition to his salary of $6,000. The Auditors advise that Sir Adam Beck has accepted this additional $6,000. since 1st June, 1914.

No member of the Commission other than the Chairman received remuneration prior to 1st November, 1914. No remuneration was provided in the Order-in-Council of October, 1914, and a member of the Commission who was a member of the Assembly was in the same position as the Chairman had been prior to 1912, i.e., unable to accept any remuneration and retain his seat in the Legislature. Accordingly it was necessary to further amend the Act in 1915 extending the saving provisions of the 1912 amendment to cover other members of the Commission as well as its Chairman.

On the 29th of June, 1915, an Order-in-Council was passed pursuant to the 1914 and 1915 amendments, directing that members of the Commission other than the Chairman be paid the sum of $4,000., per annum, from the 1st November, 1914. All the members of the Commission from time to time since 1914 have accepted the sums so directed to be paid.

Barrage Board and is not responsible for its maintenance.

In 1924, Section 22 was amended to require the municipalities to provide a sum not exceeding $10,000. in the part of the Province and other members of the Commission in addition to the parties and of the Commission's general fund. Payment. Payment on interim-account was passed on the 5th day of January, 1924. Although that the Commission be paid on from the Land Fund, 1924, an amount not at $4,000. In addition to the salary of $5,000. The application states that it when been mentioned that maintenance at $6,000. minus 1st June, 1924.

In another of the Commission other than the Saskatchewan Government prior to 1st January, 1924. In representation was provided in the Order-in-Council of January, 1924, and a number of the Commission was was a member of the Assembly was in the same position as the Saskatchewan has been prior to 1927. I.e. Manitoba is merely the Saskatchewan and this is all such in the Legislature. Accordingly it was necessary to further amend the Water Conservation Act of the 1921 amendment to enter other members of the Commission as well as the Chairman.

In the 21st of June, 1923, an Order-in-Council was passed payment to the 1923 and 1924 assessments, directing that amounts of the Commission other than the Chairman be paid the sum of $4,000. per annum, from the Land Revenue, 1924. All the members of the Commission from time to time since 1924 have accepted the sums so directed to be paid.

With the acquisition of The Ontario Power Company and the election of the members of the Commission as President and Vice-Presidents of the Company and of four employees of the Commission as directors of the Company, the Chairman and members of the Commission received additional remuneration for their services as officers of the Company by virtue of resolutions passed at directors' meetings, in the following terms:

Directors' Meeting, 26th June, 1918.

Moved by Mr. Lucas, seconded by Colonel McNaught, that the salary of the President be increased by the sum of Six Thousand Dollars per annum, such increase to date from the 1st day of August, 1917, the date on which the control of The Ontario Power Company of Niagara Falls passed into the hands of the Hydro-Electric Power Commission of Ontario.

(Signed) A. Beck, President.

Directors' Meeting, 29th June, 1920.

Upon motion duly made and seconded, the salary to be paid to the 1st and 2nd Vice-Presidents was fixed at $2,000. per annum each, the same to take effect from the 14th day of January, 1920, being the date upon which the annual general meeting was held.

(Signed) A. Beck, President.

The salaries so voted have been accepted by Sir Adam Beck and the members, from time to time, of the Commission.

With respect to the members of the Commission voting themselves salaries this Commission's Report on The Ontario Power Company includes as a finding at page 54 the following:

with the regulation of the Ontario Power Company and the matters at the consultation on President and Vice-President of the Company and of that employee of the Company in charge of the Company, the contracts and tender of the Commission received additional communication for their services as officers of the Company by virtue of resolutions passed by directors' meetings in the following terms:

Directors' Meeting, June 20th, 1913.

Moved by Mr. Ross, seconded by Colonel McGaffey, that the salary of the President be increased by the sum of six thousand dollars per annum, such increase to date from the 1st day of October, 1912, the date on which the control of the Ontario Power Company of Niagara Falls passed into the hands of the Hydro-Electric Power Commission of Ontario.

(Signed) A. Rose, President.

Directors' Meeting, 20th June, 1913.

Upon motion duly made and seconded, the salary to be paid to the Ice-Gas Treatment was fixed at $[illegible], per annum each, the same to take effect from the 16th day of January, 1913. Being the date upon which the annual general meeting was held.

(Signed) A. Rose, President.

The minutes so noted have been examined by the Commission and the members from time to time of the Commission.

With respect to the members of the Commission acting respectively during this Commission's report as the Ontario Power Company included as a finding at page 94 the following:

> "The members of the Commission although personally having no interest in The Ontario Power Company and but nominal duties to perform as Directors and Officers of that Company, voted themselves salaries as such officers, amounting in the aggregate to $10,000. per annum. Their action in so doing was improper and in violation of the spirit, if not the letter, of the Power Commission Act".

The annual salaries or other remuneration of the members of the Commission at the present time are: Chairman - $10,000.; each Commissioner - $6,000.

It is submitted that the Act should be amended striking out the limitation of $15,000. required to be provided by the municipalities under Section 23; and requiring the Lieutenant-Governor in Council to determine the remuneration of the Commissioners in respect of all services rendered directly or indirectly to the municipalities, the Commission and the Province, and the proportion thereof to be annually apportioned to and paid by municipalities in the cost of power.

B. Chief Engineer, Accountant and Secretary.

1. Present Law.

The salaries of the Chief Engineer, Accountant and Secretary are fixed by the Commission, subject to ratification by the Lieutenant-Governor in Council.

> 6.-(1) "The Commission may appoint a Chief Engineer, an Accountant and a Secretary and such other engineers, accountants, officers, servants and workmen as may be deemed requisite".

6.-(2) "The salaries or other remuneration of the Chief Engineer, Accountant and Secretary so appointed shall be fixed by the Commission, subject to the ratification of the Lieutenant-Governor in Council."
1907,c.19,s.6; R.S.O.1914,c.39,s.6;
1916,c.19,s.2; 1918,c.14,s.2.

2. Historical Sketch

Section 6 of the Act quoted above was first enacted in 1907. It required the Lieutenant-Governor in Council to ratify the salaries of all employees of the Commission as in the case of the Ontario Civil Service. In the Revision of 1914 its form only was changed.

6.-(1) "The Commission may appoint a chief engineer, an accountant and a secretary and such other engineers, accountants, officers, servants and workmen as may be deemed requisite".
6.-(2) "The salaries of other remuneration of the persons so appointed shall be fixed by the Commission, subject to the ratification of the Lieutenant-Governor in Council, and shall be payable out of such money as may be appropriated by this Legislature for that purpose."
1907,c.19,s.6; R.S.O. 1914,c.36,s.6.

In 1916, the words "and shall be payable out of such money as may be appropriated by the Legislature for that purpose" were deleted.

In 1918, the provisions of subsection 2 were restricted to certain officers by striking out the word "persons" in the first line and substituting therefor the words "Chief Engineer, Accountant and Secretary".

3. Comment

Prior to 1918 the salaries of all officers and employees of the Commission were required to be ratified by the Lieutenant-

Governor in Council. Since 1916, the salaries of the Chief Engineer, Accountant and Secretary only have required such ratification.

There is no record of the ratification by the Lieutenant-Governor in Council of the salaries of any officers or employees of the Commission either prior or subsequent to 1918. The Auditor, Mr. Clarkson, has pointed out the failure to comply with the Act in this respect in every report issued by him since his appointment in 1916.

The Public Accounts of the Province for the year ending 31st October, 1922, show the following salaries paid during that year: Chief Engineer, $12,400., Secretary, $7,800., Accountant, $5,400. The Chief Engineer and Secretary each draw $2,400. and the Accountant $500. annually in respect of their services to The Ontario Power Company. These sums are included in the salaries shown in the Public Accounts, but are not noted separately.

It is submitted that in future the provisions of section 6 (2) should be strictly complied with. In the alternative, it is suggested that a provision which has been the law for 16 years and never honoured might well be repealed.

With regard to the salaries of these three officers of the Commission in respect of The Ontario Power Company, the authorizing resolutions of the Directors are open to the interpretation that it was merely the intention to charge a portion of their regular salaries to the Company. If such was the intention, there can be no valid objection; on the other hand, if the

intention were to grant additional salaries, the same remarks apply as to the remuneration of the Chairman and members of the Commission (ante). It is submitted that the work done by these officers in respect of the Company is covered by their salaries as officers of the Commission.

Section 24a notes seem fit to make any amendment.

> 24a.-(1) "The Commission, with the approval of the Lieutenant-Governor in Council may appoint an officer to be known as the Comptroller of the Commission who shall hold office during the pleasure of the Lieutenant-Governor in Council and shall countersign every cheque issued by the Commission, but unless countersigned shall neither create the issue of the cheque be authorized". 1910,c.16,s.7; 1917,c.40,s.4.
>
> The duties of the Comptroller, if and when appointed, are set out in Subsections [illegible] of Section 24. Provision is made for a vacancy in the office by Subsection 2, and Subsection 7 requires the salary to be fixed by the Commission, approved by the Lieutenant-Governor in Council, and also by the Commission as part of the cost of administration.

F. Existing policy and practice

The Comptroller provisions (section 24) were first created in 1916 (c.16,s.6). In the original form the duties assumed the Lieutenant-Governor in Council as the principal superior. The Comptroller had long for years, of course, been a Government official. The Comptroller so appointed would look for authority and instructions rather to the Lieutenant-Governor in Council than to the Commission. For example, the salary of the Comptroller was to be fixed by the Lieutenant-Governor in Council and paid out of Legislative Supply appropriations.

C O M P T R O L L E R

1. Present Law

The Commission is authorized by Section 6a of the Act to appoint a Comptroller. The provision is permissive and the Commission has never seen fit to make any appointment.

> 6a.-(1) "The Commission, with the approval of the Lieutenant-Governor in Council may appoint an officer to be known as the Comptroller of the Commission who shall hold office during the pleasure of the Lieutenant-Governor in Council and shall countersign every cheque issued by the Commission, but before countersigning shall satisfy himself that the issue of the cheque is authorized". 1916,c.19,s.4; 1917,c.20,s.2.

The duties of the Comptroller, if and when appointed, are set out in Subsections (2) and (4) of Section 6a. Provision is made for a vacancy in the office by Subsection 5,and Subsection 7 requires the salary to be fixed by the Commission, approved by the Lieutenant-Governor in Council, and paid by the Commission as part of the cost of administration.

2. Historical Sketch and Comment.

The Comptroller provisions (Section 6a) were first enacted in 1916 (c.19,s.4). In its originalform the Section authorized the Lieutenant-Governor in Council, not the Commission, to appoint a "Comptroller" and from the terms of the Section it appears that a Comptroller so appointed would look for authority and instruction rather to the Lieutenant-Governor in Council than to the Commission. For example, the salary of the Comptroller was to be fixed by the Lieutenant-Governor in Council and paid out of Legislative appropriations.

In 1917, (c.20,s.2), the Section was amended. Subsection 1 quoted on page 52 took its present form. Whereas Subsection 2 had read "The Comptroller shall give such directions as he may deem proper as to the books of account kept by the Commission", it was amended to read as it now reads, "The Comptroller may give such directions as he may deem proper, and as the Commission may approve, as to the books of account kept by the Commission". The "system and method" of keeping the Commission's books to be prescribed by the Comptroller was originally to be approved by the Lieutenant-Governor in Council; as the provision now reads the approval of the Commission and not of the Lieutenant-Governor in Council is required. The salary of the Comptroller, instead of being fixed by the Lieutenant-Governor in Council, is now to be fixed by the Commission, with the approval of the Lieutenant-Governor in Council. Generally it is apparent that the principle behind the original provision was completely repudiated; instead of the Government naming a Comptroller appointed by and responsible to the Lieutenant-Governor in Council, absolutely independent of the Commission, the Section as amended merely authorized the Commission to engage another officer, to be known as a Comptroller, whose instructions and authority would emanate solely from the Commission and whose responsibility to the Government would appear to be no greater than the present Accountant of the Commission.

The Section (6a) was again amended in 1918 (c.14,s.3). The nature of the amendments would seem to indicate a decision of the Commission not to appoint a Comptroller, for the time being, at least;

the purpose of the amendments was apparently to enable the Commission to implement that policy. For example, the original section contemplated that the annual report of the Commission would be made to the Provincial Treasurer "through the Comptroller". (Subsection 3). This Subsection was not amended in 1917. In 1918, the words "through the Comptroller" were repealed.

The section has not been amended since 1918.

A P P E N D I X G A

1. Present Law

The provisions respecting the audit of the accounts of the Commission are as follows:

> 6a.-(5) "The accounts of the Commission shall, upon the direction of the Lieutenant-Governor in Council, be from time to time, and at least once every year, audited either by the Auditor for Ontario, or by other auditor or auditors named in the direction of the Lieutenant-Governor in Council". 1916,c.18,s.4,part; 1918,c.14,s.3.
>
> 14. "The Lieutenant-Governor in Council may from time to time raise by way of loan in the manner provided by The Provincial Loans Act such sums as the Lieutenant-Governor in Council may deem requisite for the purposes of this Act; and such sums may be paid over to the Commission and shall be accounted for and audited in the manner provided with respect to the management of the public revenue and public accounts". 1906,c.18,s.17; 1907,c.19,s.20; R.S.O. 1914,c.39,s.14.

2. Historical Sketch

Prior to 1916, the only provision in the Power Commission Act as to the manner in which, or by whom, the accounts of the Commission were to be audited was section 14 set out above. The Act required the Commission to pay over all sums received by it to the Treasurer of Ontario. As a matter of interior economy, the status of the Commission closely resembled that of the Insurance Department, or any other Provincial Department, today.

The present provision was originally enacted in 1916, no doubt partly in the light of the investigation of the so-called "Clancy charges" before the Public Accounts Committee during that Session. The only amendment since 1916 was made in 1918, when the

words "named in the direction of the Lieutenant-Governor in Council" were added.

3. Comment

It is to be noted that there is no requirement as to the submission of reports by the Auditors so appointed to the Province. The Commission is required to report annually to the Treasurer of Ontario and the nature of the information expected is specifically mentioned. As a matter of fact, the Auditors, Messrs. Clarkson, Gordon & Dilworth, have accepted the practice of reporting to the Province annually. It is understood, however, that some doubt has been raised as to the right of the Auditors to report direct to the Government.

It is submitted that it would be well to provide by legislation that the Auditors shall report to the Treasurer of Ontario and prepare and furnish such statements, with respect to the accounts of the Commission, to him as he shall from time to time request and direct.

with "regard to the discretion of the lawyers-drafters in deciding" were noted.

3. Comment

It is to be noted that there is no requirement as to the admissibility of policies by the majority as applied in the Protocol. The Commission's tentative proposal is simply according to the Treasurer of Ontario that the nature of the information requested is essentially necessary. As a matter of fact, the Insurance Bureau, Ontario & Quebec, have supplied the practice of requesting as the Treasurer usually. It is mandatory, however, that some power has been taken as to the right of the institute to refuse direct in the Government.

It is mentioned that it would be well to provide by legislation that the policies shall remain to the Treasurer of Ontario and withdrawn when necessary, with respect to the necessity of the commission. It did not be shall from time to time request and direct.

GENERAL AND RESERVE FUNDS

1. Present Law

1. All sums received by the Commission from every source are deposited in one common fund known as the "General Fund", out of which all expenditures of the Commission are made "without regard to the special trusts or purposes" under which the constituent parts of the fund come into its hands.

General Fund.

> 6b. "All special funds and the income and revenue thereof and all moneys and revenues which now are in or shall come into the hands of the Commission whether as agent, trustee, owner or otherwise shall form one fund to be called "General Fund", and the Commission shall have power from time to time to make any and all expenditures out of the said fund for the purposes and objects of the Commission without regard to the special trusts or purposes under which the same or any part thereof may come to its hands; and the Commission shall account for and from time to time pay out of the said funds all moneys for which it shall be so accountable". 1918,c.14,s.4, part.

2. The authority of the Commission to set apart certain reserve funds is covered by two distinct sections enacted at different times, viz: Section 6c and Section 14b.

Reserve Fund.

> 6c. "The Commission may retain and set apart out of the moneys coming into its hands from time to time such sums as may in the opinion of the Commission be sufficient,-
>
> 1. To provide for the renewal, reconstruction, alteration and repair of the works constructed and operated by the Commission.;
>
> 2. To meet interest upon working capital and for the operation of the Commission under Section 21 of this Act, and to meet obligations, charges and expenses arising from time to time in the course of such operations;

3. And to meet any unforeseen expenditures or costs caused by the destruction or injury to any of the works of the Commission or otherwise incurred or payable to the Commission".
1918,c.14,s.4. part.

14b. "The Commission may set apart out of the moneys coming to its hands from time to time from any municipal corporation, railway company or distributing company such sums as may be sufficient in the opinion of the Commission to provide for the renewal, reconstruction, alteration and repair of the works constructed and operated by the Commission, and to meet any unforeseen expenditure caused by the destruction or injury of any such works".
1916,c.19,s.6, part.

Superannuation Fund.

3. The Commission is authorized to establish a Superannuation Fund for its employees by Section 6cc.

6cc. "The Commission, with the approval of the Lieutenant-Governor in Council, may establish a fund for the payment to permanent employees of the Commission, of superannuation and retiring allowances, or of a gratuity or annual allowance to the dependents of employees dying while in the service of the Commission, and a fund for providing sick benefits for permanent employees, and may provide for contributions to such fund by the Commission and by its employees, or for the establishment and support of such fund entirely at the cost of the Commission".
1919,c.15,s.2.

The permanent employees of the local Hydro Commissions may share the benefit of this Superannuation Fund on certain terms.

Interchange of Funds.

6ccc. "The Commission, with the approval of the Lieutenant-Governor in Council, may enter into an agreement with the corporation of any municipality receiving power from the Commission for including permanent employees of any Commission established under the Public Utilities Act,

3. and to meet any unforeseen emergencies or injury to any of the works of the commission or otherwise incurred or payable to the commission".
1920,c.14,s.6, part.

14b. "The commission may not expend one of the moneys during in the hands from time to time any industrial undertaking, without payment or electricity commission such sum as may be sufficient in the opinion of the commission to provide for the removal, reconstruction, alteration and repair of the works connected and operated by the commission, and to make any unforeseen expenditure caused by the suspension or injury of any such works".
1919,c.19,s.6, part.

4. The commission is authorized to maintain a superannuation fund for the employees by deducting sum.

Superannuation fund.

COPY

and "the commission, with the approval of the lieutenant-governor in council, may establish a fund for the purpose of providing of the commission, of contributing and paying allowance, or of a gratuity or annual allowance to the dependents of employees who dying while in the service of the commission, and a fund for providing sick benefits for permanent employees, and may provide for contributions to such fund by the commission and by the employees, or for the establishment and support of such fund entirely at the cost of the commission".
1919,c.19,s.3.

The pensions employees at the time this act comes into force shall be brought at this superannuation fund in accordance.

Done. "The commission, with the approval of the lieutenant-governor in council, may enter into an agreement with the corporation of any municipality providing that the commission for including permanent employees of any commission established under the Public Utilities Act,

or under this Act, for the management and control of works for the distribution of electrical power or energy in the municipality upon such terms as to the contribution by a municipal corporation and otherwise as may be deemed expedient". 1919,c.14,s.2.part.

Sinking Fund.

4. The Commission is required to invest all sums received on account of sinking fund in provincial securities and deposit such securities with the Treasurer of Ontario as security for the repayment of advances by the Province to the Commission.

(vide s.15 (1): "Sinking Fund")

Surplus Funds.

5. The Commission may retain any surplus balances in its hands at the credit of any municipality during the continuance of its contract as security against future obligations of the municipality, provided that it allows the municipality interest at 4% upon the balance retained.

6d. "Any surplus or part thereof in the hands of the Commission from any municipality may be retained by the Commission as security against future obligations to the Commission of the same municipality for so long during the continuance of the contract of the municipality as the Commission may think fit but the Commission shall allow to the municipality interest at the rate of four per centum per annum upon the amount of such surplus from time to time retained by the Commission". 1918,c.14,s.4, part.

Investment of Funds.

6. The Commission is authorized to invest any funds in its hands, other than sinking funds, and not required for the objects of the Commission, in debentures or other securities of the Province of Ontario or of the Dominion of Canada.

Duties:

(video 8.18 (ii): "Sinking Fund")

8. The Commission may establish and maintain a sinking fund in respect of any municipality during the existence of the municipality, provided that it allows the municipality interest on the sinking fund.

Surplus funds.

9. Any surplus at year ended in the Commission from any municipality may be retained by the Commission to provide equal future obligations to the Commission of the same municipality for an land during the municipality for an land during the municipality in respect of the municipality as the Commission may think fit but the Commission shall allow to the municipality interest upon the amount at such rate not exceeding five per cent as may be fixed by the Commission".
1919,c.14,s.4. part.

6. The Commission is authorized to invest any funds in its hands, under the sinking fund, and to apply the proceeds of the operations, in redemption of other securities of the Commission, in accordance with the provisions of the Revised Statutes of Canada.

Investment of Funds.

6a. "The Commission may, at its discretion, invest any funds other than sinking funds not required in carrying out the objects of the Commission in debentures or other securities of the Dominion of Canada or of the Province of Ontario". 1918,c.14,s.4, part.

7. Interest on the indebtedness of the Commission to the Province is paid annually under Section 15 (1a). (vide "Interest").

Application of Other Income.

All other sums are applied under the terms of the provisions heretofore quoted and those of section 15 (2):

15 (2) - "The income of the Commission shall be applied to the necessary operating expenses, to the preservation, improvement, supervision, renewal, repairs, maintenance and insurance of its works, and to the payment of the remuneration and expenses of the Commissioners and the salaries of officers and others employed by the Commission, and to other incidental expenses". 1916,c.19,s.7 (2).

8. The Commission is authorized to sell electric power to private companies or to "any other corporation or person", and any net profit made by the Commission in so supplying power is to be applied in reducing the cost of power to the municipalities having power at cost contracts with the Commission, i.e., Hydro municipalities.

Application of Profits.

"21. (1) Subject to the approval of the Lieutenant-Governor in Council the Commission may contract from time to time with a railway company or a distributing company or with any other corporation or person for the supply of electrical power or energy."

"21. (2) Any net profit made by the Commission in supplying power under the next preceding sub-section, after making provision for the cost of acquiring or constructing and of maintaining the works by means of which the power or energy is supplied, shall be

of which the power or energy is supplying, shall be constructed and at maintaining the work so begun after making provision for the cost of supplying or providing power under the Act, shall be deemed to be a public utility."

"13. (1) Any profit made by the Commission in the supply of electrical power or energy."

Income to be applied to the supply of electrical power or energy.

(2) Any person or authority or body of persons (or any other person or authority or body of persons) shall be deemed to be a distributing municipality within the meaning, i.e., where municipalities.

municipalities entitled under an agreement with the Commission, to use the supply of power in the municipality.

"(1) Subject to the approval of the Lieutenant-Governor in Council the Commission may construct from time to time with a reasonable margin by a distributing municipality or with any other municipality or person (or persons) in order to carry out the objects of the Commission or make improvements of the facilities of canals or of the Division of Income." 1918,c.14,s.4, part.

Application of other income.

7. Subject to the liability of the Commission to the province in paid annually under section 15 (1a) (vide "Interest").

All other sums are applied under the terms of the provisions hereinbefore recited and based of section 15 (3):

> 15 (2) - "The income of the Commission shall be applied to the necessary operating expenses, in the provision, improvement, extension, replacement and renewal of its works, and in the payment of the remuneration of the members of the Commission and the salaries of officers and others employed by the Commission, and in other lawful expenses". 1914,c.10,s.7 (2).

Application of profits.

8. The Commission is authorized to sell electric power in private companies or to "any other corporation or person", and any net profit made by the Commission in so supplying power is to be applied in reducing the rate of power to municipalities.

applied in payment of the cost of maintaining the works acquired or constructed and operated by the Commission." 1906,c.18,s.9,part; 1907, c.19,s.16,part; R.S.O. 1914,c.39,s.21,part.

2. Historical Sketch

Prior to 1917, the Commission was required to pay over all sums received by it to the Treasurer of Ontario. In that year the sums required to be paid over were restricted to sums received "on account of sinking fund or interest";

> 15. (1) "All sums received by the Commission on account of sinking fund or interest shall be accounted for and paid over to the Treasurer of of Ontario to be applied from time to time in the retirement of the securities given by Ontario for any debt incurred under the authority of this Act". 1906,c.18,s.18; 1907,c.19,s.21, redrafted; R.S.O.1914,c.39,s.15; 1916,c.19,s.7-underlined words added; 1918,c.14,s.7-repealed.

The application of the other income of the Commission was provided for by Section 15 (2); and Section 14b authorising certain Reserve Funds was enacted.

In 1918, Section 6b authorising the so-called "General Fund", Section 6c providing for Reserve Fund in terms similar to Section 14b, Sections 6cc and 6ccc with regard to Superannuation Fund, Section 6d with regard to Surplus Funds and Section 6e regarding the investment of any funds other than Sinking Funds in certain Government securities, were enacted. At the same time, Section 15 (1) was repealed and two new subsections substituted therefor providing for the disposition of sinking fund moneys and the payment of interest by the Commission to the Province. (vide p.26)

3. Comment

1. General Funds

It was brought out in evidence that this Section (6b) was drafted by G. H. Kilmer, K.C., Counsel to the Commission, at the request of the Auditor, Mr. Clarkson, and that the reason for its enactment was to do away with the necessity of establishing innumerable different trust funds by forming one general fund and to simplify the allocation of the proper amounts to be charged and credited to each municipality for power. Another reason probably was that the Commission had gone into the business of purchasing electrical supplies and selling them to municipalities on a large scale. The Commission was not authorized at that time to use any of its funds for working capital or collect interest thereon from the municipalities. The enactment of Section 6b in effect provided the Commission with working capital and enabled the Commission to purchase these supplies, paying for them out of the "General Fund" and afterwards to recoup the General Fund when the supplies were sold and the accounts paid.

In a memorandum addressed to the Attorney-General under date of 15th of October, 1921, J. A. Ellis, Esq., Vice-Chairman of the Ontario Railway and Municipal Board, says in part as follows: "I understand that Mr. Kilmer, who drafted Section 6b, is of the opinion that it does not authorize the Power Commission to use moneys which come into its hands by way of appropriation for a specific purpose to be expended for anything except such specific purpose". Mr. Clarkson, the Auditor, stated in evidence

that it was thought by Mr. Kilmer "that the merging of them (trust funds) all in one account did not widen the responsibility or lessen the responsibilityof the Commission to apply them as they would have had to apply them before." (Ev.3121).

One of this Commission's Legal Advisers (J. A. McAndrew, K.C.) has expressed a similar opinion in the following terms:

> "There does not appear to be any doubt that the Commission has no authority to use funds, received or collected for a specific purpose, for other purposes of the Commission for which no appropriation has been made by the Legislature or no Special Warrant issued under Section 24b of the Act. Section 5b of the Act which makes provision for the establishment by the Commission of a 'General Fund' of all moneys and revenues which shall come into its hands and giving it power 'to make any and all expenditures out of the said fund for the purposes and objects of the Commission, without regard to the specific trusts or purposes under which the same or any part thereof may come into its hands", does not authorize expenditure for purposes or objects for which there were no moneys in the 'General Fund'".

This Commission's "Report on Examination of Auditor's Reports" has drawn attention to the manner in which the expenditures made by the Commission on the Queenston-Chippawa Development exceeded advances therefor, the excess so expended being provided out of the General Fund. Between 1917 and 1921, inclusive, the amounts so expended in excess of advances in respect of appropriations exceeded $14,000,000. To quote from this Report at page 18: "It is clear from the Auditor's Reports and from the Act quoted that the Commission has not the power and never had any power to employ funds in its hands derived from other sources for the purposes of the Niagara Development".

Inasmuch as some doubt may exist as to the authority of the Commission to use appropriations coming into its hands for a specific purpose, for other purposes, and in view of the opinions expressed and the excerpts from the various reports of this Commission, it is submitted that declaratory legislation should be passed providing that any moneys which come into the hands of the Commission from any appropriation voted by the Legislature or procured under Special Warrant should not be used for any purpose except that specified in such appropriation or Special Warrant.

There is no doubt that the provisions of Section 6b do not apply to or authorize the expenditure of moneys in the General Fund for undertakings such as the Hydro-Electric Railways. The Commission has interpreted the Section to apply to all its undertakings whether operated under the Power Commission Act or otherwise. Expenditures approximating $1,109,000. in respect of the Toronto-Port Credit Railway and sundry Radial undertakings were met out of the General Fund moneys received in respect of power undertakings.

The Honourable I. B. Lucas stated in his evidence (Ev.3106-8) before this Commission that authority was given to make these expenditures on Hydro-Electric Railways as "the General Fund is there and money can be paid out of that for any properly authorized work without regard to the special trust fund to which that money belonged", and, in his opinion, as it was for an authorized purpose, the using of the fund was perfectly justified. Mr. G. T. Clarkson takes a different view (Ev.3108), pointing out that

the funds held under the Power Commission Act cannot be used for the purposes of Hydro-Electric Railways. In reply to the Honourable I. E. Lucas, he stated: "There is nothing in the Hydro Radial Act making the expenditures out of these moneys of the general account an authorized act ... it was never contemplated that the moneys could be taken out of that fund other than for strictly authorized purposes". (Rv.5119).

Certain expenditures made by the Commission in connection with the Sandwich, Windsor and Amherstburg Railway and the Windsor and Tecumseh Electric Railway are commented upon in this Commission's Report on those Railways at page 29 as follows:

> 1. "The expenditures by the Commission for engineering, accounting and other expenses prior to the agreement, and which have been capitalized and a portion of which is being written off each year, were made out of the general funds of the Commission without any appropriation therefor by the Legislature and without legal warrant or authority".
>
> 3. "Section 6b of the Power Commission Act, relating to the establishment of a general fund of all moneys received by the Commission are interpreted by the Commission as applicable to moneys and taxes of the Hydro-Radial Railways. The contention of the Commission has been questioned by the Government Auditor of the accounts of the Commission, and we are advised that it is not well founded in law. Aside from the question of law there seems to us to be good reason for keeping the moneys of the Radial-Railway System entirely separate and distinct from the general funds of the Commission held by it under the Power Commission Act".

The situation is commented upon in this Commission's Report on the Guelph Radial Railway at page 17:

> "In conclusion we respectfully draw attention to the fact that the revenues of the railway are placed in and the expenditures for it are made

from the "General Fund" of the Commission established in pursuance of Section 6b of the Power Commission Act, the application of which Section to other than power revenues and expenditures has been called in question".

This would also seem a case for declaratory legislation, and it is submitted that the General Fund set up under the Power Commission Act should be declared not to apply to sums received in respect of undertakings other than power undertakings operated under the terms of The Power Commission Act.

2. Reserve Funds

It was noted in the Historical Sketch (ante) that Section 6c was enacted in 1916. Its apparent intention was to supplant Section 14b which had been passed in 1916. The language of the two Sections is similar and all the authority of the earlier enactment appears to be included in the later Section. In the interests of simplicity and to obviate confusion, it is suggested that Section 14b might well be repealed at the first opportunity.

Prior to the enactment of Sections 6b and 6c in 1916, the Commission was using upwards of $750,000. of advances made by the Province, as working capital, (1916 Draft Report, p.15).

Working Capital

With the enactment of these Sections the Commission obtained authority, though not in so many words, to use the moneys of the General Fund for working capital and to set aside such sums as in its opinion were necessary to meet interest on such working capital. At the same time Section 45 was amended to require the municipalities to pay interest on the working capital employed by the Commission as part of the cost of power. It is to be noted

in passing that this Commission has never criticized the use of the reserve funds of the Commission for working capital in any of its reports but it has frequently had occasion to deprecate the employment of such funds on capital account in connection with undertakings such as the Essex System or the Hydro-Electric Railways, in respect of which such funds had not been set aside and where, in many cases, no appropriation or an insufficient appropriation had been made by the Legislature.

Section 6c authorizing certain reserve funds has been interpreted as including a reserve against accounts of municipalities unable to pay their power bills. "In the event that any municipality or corporation taking power from a system shall become unable to meet its share of annual costs, the Commission is empowered to provide for bad debts so incurred out of income" (Auditor's Special Report, 1916, p.18). This Commission is not aware of any case in which a municipality has become unable to meet its power bills, although there are many instances of accumulated deficits remaining unpaid for many years, and at least two cases - Port Arthur and Renfrew - where municipalities have refused to make full payment of the accounts rendered by the Commission.

Bad Debts

Section 6c authorizing the Commission to set apart funds to meet ... "obligations, charges and expenses arising from time to time in the course of such operations" read with Section 15 (2) relating to the application of the income of the Commission, probably empowers the Commission to set up a reserve

Section 6a authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6b authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6c authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6d authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6e authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6f authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6g authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6h authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6i authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6j authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6k authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6l authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6m authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6n authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6o authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6p authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6q authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6r authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6s authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6t authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6u authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6v authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6w authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6x authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6y authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

Section 6z authorizing the commission to set aside funds
if they ... "application, concern and expenses arising from
so time it has course of such operations" from this section
in (a) relating to the allocating of the income of the Commission,
utilities, thereby encourage the commission to see up a reserve
fund for unforeseen contingencies, and authorizing the use
of the reserve fund if such temporarily had commission is de-
ficient to meet its obligations, and authorizing investment of
the reserve fund in such securities as are authorized by
the constitution of the province of Ontario.

for doubtful or bad accounts. The language is by no means definite, however, and inasmuch as any losses not borne by the municipalities must ultimately be charged against the Province, it is suggested that the interests of the Province should be safeguarded by giving the Commission express authority to set up such a reserve, and direction that the Hydro municipalities generally shall be held responsible for the default of any one of their number. The reserve should be available not only to pay the accounts of municipalities unable to pay their bills, but to take care of the accounts of a municipality which refuses to pay its bills and which, for one reason or another, cannot or should not, in the opinion of the Commission, be collected by process of law.

The Hydro movement is a municipal partnership movement; the Commission is trustee for the municipalities; the mutual liability of the municipalities should be clearly defined.

3. Surplus Funds

Although in theory the municipalities receive power from the Commission at cost, in actual practice payments in excess of cost are inevitable. Each municipality receiving power from the Commission makes monthly payments for power in accordance with interim rates fixed by the Commission on the basis of the estimate of the cost of power for the ensuing fiscal year. At the close of each fiscal year all the charges entering into the cost of power are adjusted and apportioned with the result that

individual municipalities have either overpaid or underpaid the total cost, except in the very rare cases where the actual cost corresponds exactly with the estimated cost. Prior to 1918 the Commission had no right under the Act to retain surplus funds so collected from municipalities in excess of the cost of power. As a matter of fact, the Commission had assumed the authority to do so and it employed surplus funds for the general purposes of the Commission. (Auditor's Draft Report, 1916, page 16).

Section 6d passed in 1918 authorizes the Commission to retain any surplus coming into its hands from municipalities in respect of the cost of power. The only requirement is that the Commission must allow the municipalities interest at the rate of 4% upon the amount of such surpluses from time to time retained by the Commission. It is apparent that as the provision now reads it would be possible for the Commission by basing the interim rates on unduly conservative estimates to acquire large sums of money by way of overpayment and to have the use of such money in consideration of paying the low interest rate of 4%. There is no indication that the Commission has ever attempted in effect to force a loan from the municipalities in this manner. On the other hand, it is suggested that legislation should be passed to obviate such a possibility.

4. Investment of Funds

In 1918, Section 6e was passed to authorize the Commission to invest any of its funds, other than sinking funds, in securities

of the Dominion of Canada or of the Province of Ontario. It would seem that such a provision was unnecessary and that the Commission did not need any special authority to invest its funds in trustee securities. In any event, the enactment of the Section indicates a direction on the part of the Legislature as to the disposition by the Commission of any funds in its hands not required for its general purposes. Prior to 1918, the Commission was in the habit of employing its renewal and other funds not only as working capital, but to finance construction and other capital expenditures. Since 1918, this practice has not been discontinued and to October 31st, 1922, the Commission had not taken advantage of Section 6a or invested any of its funds other than sinking funds in Dominion or Provincial securities.

In 1921, Mr. Clarkson pointed out that "it is essential ... that funds for the renewal of works should be available ... and that they should not be invested in physical assets not readily realizable". (Report, 1921, page 182). It is suggested, by way of implementing Mr. Clarkson's view, that the Act should be amended to require the investment of all renewal and other reserves, not immediately required for working capital, in Government securities, and to prohibit the employment of such funds on capital account or in the construction of works.

PUBLICATION
of
ESTIMATES

1. Present Law

The law governing the negotiation of power contracts between municipalities and the Commission is set out in Sections 17 and 18.

> 17. "Neither the Province nor the Commission, nor any member thereof shall incur any liability by reason of any error or omission in any estimates, plans or specifications prepared or furnished by the Commission". 1906,c.18,s.6, part; 1907,c.19,s.24; R.S.O. 1914,c.53,s.17.
>
> 18.-(1) Any municipal corporation may apply to the Commission for the transmission and supply to the Corporation of electrical power or energy for the use of the corporation and the inhabitants of the municipality for lighting, heating and power purposes or for any or either of such purposes or for any of the purposes mentioned in Section 20.
>
> (2) All contracts for such transmission and supply heretofore entered into between the Commission and any municipal corporation shall continue to be binding on the parties thereto according to the terms thereof and subject to the provisions of this Act.
>
> (3) The Commission shall thereupon furnish to the corporation a statement of the maximum price per horse-power at which the electrical power or energy will be supplied at the point of development or of its delivery to the Commission, and an estimate of the cost of constructing or providing a transmission line by means of which the amount of electrical power or energy required by the corporation is to be supplied and of maintaining the same, and may furnish to the corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power or energy by the corporation and an estimate of the cost thereof, and such other information as the Commission may deem advisable.
>
> (4) The council of the municipal corporation may thereupon enter into a provisional contract with the Commission for the supply of electrical power or energy for the purposes mentioned in this Act.

(5) The provisional contract shall not be binding upon the corporation unless and until a by-law approving the same has been submitted to and has received the assent in accordance with the provisions of The Municipal Act of the electors qualified to vote on money by-laws; and the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law.

(6) After the provisional contract has received the assent of the electors and has been executed by the corporation and approved by the Lieutenant-Governor in Council the Commission may carry out and execute the same and shall have power and authority to do all acts necessary for that purpose.

(7) Where a municipal corporation which has not heretofore entered into a contract for a supply of power applies for such supply, and a question has been submitted to the vote of the electors of the municipality, in accordance with the provisions of The Municipal Act, as to a supply of electric power from the Commission, and the electors have voted in favour of a supply from the Commission, the council of the corporation of such municipality may authorize the entering into and such corporation may enter into a contract with the Commission in such form as may be approved by the Lieutenant-Governor in Council without submitting a by-law approving the same for the assent of the electors as provided by Subsection 5 and when executed such contract shall be legal, valid and binding."
R.S.O.,1914,c.39,s.16, part.

2. Historical Sketch

Section 17 has not been amended since 1907; section 16 has not been amended since the revision of the Statutes in 1914.

The original Act of 1906 contained a provision with regard to the submission of estimates and the passage of by-laws pursuant thereto in the following terms:

6. "Any municipal corporation may apply to the Commission for the transmission to such corporation of electrical power or energy for the uses of the corporation and the inhabitants thereof,

for lighting, heating and power purposes, and the Commission may thereupon furnish to such municipal corporation estimates of the cost of constructing, erecting, installing and maintaining all such buildings, works, plant, machinery, poles, wires, conduits and other structures as may be necessary for the purpose of supplying the amount of electrical power or energy required by such municipal corporation and may also furnish to such corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power and energy by such municipal corporation, together with an estimate of the cost thereof. The Commission shall further furnish to such municipal corporation a statement of the terms and conditions upon which such electrical power or energy may be transmitted and supplied, together with a form of the contract to be entered into between such municipal corporation and the Commission.

Provided that neither the Commission nor the Province of Ontario shall incur any liability to any municipal corporation or company by reason of any error or omission in any such plans, specifications or estimates". 1906, c.18, s.6.

7. "The council of such municipal corporation may submit to the electors of the municipality in the manner prescribed in The Consolidated Municipal Act, 1905, a by-law authorizing the municipal corporation to enter into such contract and in case such by-law receives the assent of the majority of the electors voting thereon, such contract may be entered into and executed by the Commission and the municipal corporation, subject to the approval of the Lieutenant-Governor in Council". 1906, c.18, s.7.

It is apparent that the importance of the submission of estimates and specifications was emphasized in the original Power Commission Act.

Sections 6 and 7 of the Act of 1906 were repealed with the other provisions of that Act when the new Power Commission Act was passed in 1907. Their spirit was preserved, however, in Sections 12, 13 and 24 of the new Act.

12. "Any municipal corporation may apply to the Commission for the transmission of power or energy for the use of the corporation and the inhabitants of the municipality for lighting, heating and power purposes or for any or either of such purposes or for any of the purposes mentioned in Section 14, and the Commission shall thereupon furnish to the corporation a statement of the maximum price per horse-power at which the electrical power or energy will be supplied at the point of development or of its delivery to the Commission and an estimate of the cost of constructing or providing a transmission line by means of which the amount of electrical power or energy required by the corporation is to be supplied and of maintaining the same, and may furnish to the corporation plans and specifications of the works, plant, machinery and appliances necessary for the distribution of such power or energy by the corporation and an estimate of the cost thereof, and such other information as the Commission may deem advisable. The Council may thereupon enter into a provisional contract with the Commission for the supply of electrical power or energy for the purposes mentioned in this Act." 1907,c.19,s.13.

15. (1) "The provisional contract shall not be binding upon the corporation unless and until a by-law approving the same has been submitted to and has received the assent in accordance with the provisions of the Consolidated Municipal Act, 1903, of the electors qualified to vote on by-laws for creating debts, and the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law.

(2) After the provisional contract has received the assent of the electors and has been executed by the corporation and approved by the Lieutenant-Governor in Council, the Commission may carry out and execute the same and shall have power and authority to do all acts necessary for that purpose". 1907,c.19,s.15.

24. "Neither the Province nor the Commission nor any member thereof shall incur any liability by reason of any error or omission in any estimates, plans or specifications prepared or furnished by the Commission." 1907,c.19,s.24.

It is to be noted that the enactments of 1906 and 1907 are very similar. The latter is somewhat stronger in that it

provides for the execution of a provisional contract as a condition precedent to the submission of the by-law. Upon the submission of the by-law "the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with and form part of the by-law". The inference to be drawn from these changes is that the Legislature intended to make the estimates a condition of the contract to the extent of leaving the way open for municipalities to seek redress for errors in estimates, although the manner and means of the redress is not clear on account of Section 24.

Sections 12 and 13 of the Act of 1907 were amended as to form, in 1914, and appear in the present law, in the same terms, though in different form, as Subsections (1), (3), (4), (5) and (6) of Section 18.

In 1909, the following Section was passed to meet special circumstances that had arisen in connection with the contract between the Commission and the municipal corporations of Toronto, Hamilton et al.

> 11. "Where a municipal corporation not a party to the contract set forth in Schedule A, as varied by this Act, applies for a supply of power and a question has been heretofore or is hereafter submitted to the vote of the electors of the municipality pursuant to paragraph 1a of Section 533 of The Consolidated Municipal Act, 1903, and the amendments thereto, including the amendment made during the present session as to a supply of electric power from the Commission and the electors have voted in favour of a supply from the Commission, the council of the corporation of such municipality may authorize the entering into and such corporation may enter into a contract with the Commission in the form set forth in the said schedule or with such variations thereof as may be approved by the Lieutenant-Governor in

Council without submitting a by-law approving the same for the assent of the electors as provided by Subsection 1 of Section 13 of The Power Commission Act, and when executed such contract shall be legal, valid and binding".
1909,c.19,s.11.

The provision of The Consolidated Municipal Act, 1903, referred to, reads as follows:

"533. By-laws may be passed by the Councils of the municipalities and for the purposes in this section respectively mentioned, that is to say:
1(a) For providing for a submission to a vote at any annual municipal election of any question not specifically authorized by law; for determining whether such questions shall be voted upon by the municipal electors generally or by the electors qualified to vote on a by-law for the creation of debts only, and for prescribing the procedure to be taken for such vote." 1903,c.19,s.533 part.

This Section with certain amendments to make it of general application was incorporated with Sections 12 and 13 of the Act of 1907 in Section 18 of the revision of 1914 and appears therein, and still remains, as Subsection (7).

3. Comment

It is clear from the Historical Sketch that Section 18 as it now stands contemplates two distinct lines of procedure relating to the negotiation of power contracts between the municipalities and the Commission.

The first six Subsections (originally 1907,c.19, Secs. 12 and 13), contemplate an application for power by the municipal council to the Power Commission without the submission of any question to the electors. Thereupon the Power Commission

furnishes a statement of the maximum price per horse-power, the estimated cost of distribution system, etc., pursuant to which the council may enter into a provisional contract. This provisional contract, however, is not binding upon the municipality until a by-law setting out the estimates and the terms of the provisional contract has been submitted to and received the assent of the electors.

The less cumbersome "short cut" method is that provided by subsection 7 as first enacted in 1909, (c.19,s.11) to meet the exigencies of a special case, and amended to give it general application in 1914. Where the application for power is made by a municipality not already under contract with the Power Commission, and a question has been submitted to the electors as to a supply of power and answered in the affirmative, the council of the municipality may conclude a binding contract, subject to the approval of the Lieutenant-Governor in Council, without the further submission of any by-law or the publication of any estimates.

The important difference between the two methods, to which attention is drawn, is that the first and original procedure requires that "the estimates of the Commission or a summary thereof and a copy of the provisional contract shall be published with or form part of the by-law"; the summary procedure involves neither the submission of estimates nor contract to the electors.

So far as this Commission has been able to ascertain, the original procedure has never been employed since the authorization

of the second procedure fourteen years ago.

In this connection, and as a matter of strict legal interpretation, it is to be pointed out that the provisions of the Municipal Act referred to (1903, C.19, S.583, par. 1(a) quoted above later R.S.O. 1914, C.192, S.398, par. 10; and now 1922, C.72, S.398, par. 10) provides only for "submitting to the vote of the electors of any municipal question not specifically authorized by law to be submitted," and inasmuch as sub-section 5 of section 18 specifically authorizes the submission of the question of a contract for a supply of power to the electors, it is difficult to understand the validity of a question submitted in accordance with the provisions of the Municipal Act.

To quote from this Commission's Interim Report on The Thunder Bay System at pages 4 and 5:

> "Mr. Pope, the Secretary of the Commission, on being questioned by us, stated that the Hydro-Electric Commission adopted the policy of not publishing the estimates with the by-laws on the advice of counsel.
>
> It was clearly the intention of the Legislature that the estimates and maximum price of power should serve as a basis of the contracts between the municipalities and the Commission ... Its (the Commission's) estimates formed the basis for the agreements and it should always have been willing to assume full responsibility for them".

If the intention of the Legislature were otherwise it is difficult to understand why the 1909 procedure was not substituted for that of 1907 rather than leaving the latter part of the law to the present day.

Comparison has been drawn from time to time in the reports

of this Commission between estimates of the Commission in respect of cost of power to municipalities and capital construction of works, and actual cost. In the Report on the Eugenia System, at page 17, a table is presented to show this comparison on that System. The yearly average actual cost exceeded the estimated cost in twenty-two out of twenty-three municipalities. The excess ranged from 1% to 187%. The Report concludes with the recommendation that:

> "We consider it advisable before any vote of the electors is taken, that the estimates or a summary thereof be published".

It is suggested that the practice of the past fourteen years and the absolute lack of responsibility for its estimates has gone a long way towards encouraging a situation such as is commented upon on the Eugenia System. The whole question is one to be reviewed by the Government and it is suggested that a bill to repeal the original method, section 18 (1-6) which has so fallen into disuse would test the sentiment of the Legislature. In the alternative, if the Government shares the view of this Commission as expressed in its Reports, viz: that the Commission should take full responsibility for its estimates, Subsection (7) might well be repealed.

BORROWING POWERS

1. Present Law

A. Under the Power Commission Act

(1) The Lieutenant-Governor in Council may:

(a) Borrow money under the Provincial Loans Act for the general purposes of the Commission.

> 14. "The Lieutenant-Governor in Council may from time to time raise by way of loan in the manner provided by The Provincial Loans Act such sums as the Lieutenant-Governor in Council may deem requisite for the purposes of this Act; and such sums may be paid over to the Commission and shall be accounted for and audited in the manner provided with respect to the management of the public revenue and public accounts". 1906,c.15,s.17; 1907,c.19,s.20; R.S.O.1914, c.39,s.14.

(b) Guarantee the payment of any bonds or other securities issued by the Commission and make arrangements for supplying the money necessary to fulfil such guarantees.

> 14c. "The Lieutenant-Governor in Council is hereby authorized, on such terms as may be approved by Order-in-Council, to agree to guarantee the payment of the principal and interest of any bonds, debentures and other securities issued by the Commission, and the form and manner of any such guarantee or guarantees shall be such as the Lieutenant-Governor in Council may approve. The said guarantee or guarantees shall be signed by the Provincial Treasurer or such other officer or officers as may be designated by the Lieutenant-Governor in Council, and upon being so signed, the Province of Ontario shall become liable for the payment of the principal and interest of the bonds, debentures and securities guaranteed according to the tenor

[illegible]

3. [illegible]

4. [illegible]

(a) [illegible]

(b) borrow money under the Provincial Loans Act for the general purposes of the dominion.

14. "The Lieutenant-Governor in Council may from time to time raise by way of loan in the manner provided by the Provincial Loans Act such sums as the Lieutenant-Governor in Council may deem requisite for the purposes of this Act; and such sums may be paid over to the Commission and shall be accounted for and remitted in the manner prescribed with respect to the management of the Provincial Revenue and public accounts". 1906.c.13.s.17; 1907.c.19.s.20; R.S.O.1914, c.89.s.14.

(3) Guarantees the payment of any bonds or other securities issued by the Commission for cash or other guarantees.

16. "The Lieutenant-Governor in Council is hereby authorized, on such terms as may be approved by Order-in-Council, to lend or guarantee the payment of the principal and interest of any bonds, debentures or other securities issued by the Commission, upon the form and manner of any such guarantee or guarantees, such guarantee or guarantees may be signed by the Lieutenant-Governor in Council may approve. The said guarantee or guarantees shall be signed by the Treasurer of Ontario or such other officer or officers as may be designated by the Lieutenant-Governor in Council, and upon being so signed, the obligations of Ontario shall become binding for the payment of the principal and interest of the bonds, debentures and securities guaranteed according to the tenor

thereof, and the Lieutenant-Governor in Council is hereby authorized to make arrangements for supplying the money necessary to fulfil the retirements of the said guarantee or guarantees, and to advance the amount necessary for that purpose out of public funds of the Province, and in the hands of any holder of or of any of such bonds, debentures or securities any guarantee so signed shall be conclusive evidence that the terms of this section have been complied with".
1917,c.20,s.5, part.

(c) Guarantee the performance by the Commission of any covenants of the Commission in connection with the acquisition of shares in incorporated companies.

14d. "The Lieutenant-Governor in Council is hereby further authorized on behalf of the Province of Ontario to enter into any covenants or agreements in connection with the acquisition by the Commission of any shares in any incorporated company and to guarantee the observance and performance by the Commission of any contract or agreement of the Commission in relation to such acquisition".
1917,c.20,s.5, part.

(d) Guarantee the repayment of loans negotiated by the Commission from banks or any other indebtedness incurred by the Commission.

14e. "The Lieutenant-Governor in Council may guarantee the repayment of advances made by banks or any other indebtedness incurred by the Commission, and any Order-in-Council heretofore passed stating that the Government of Ontario does guarantee the repayment of any such advances or indebtedness, shall be legal and valid, and be binding upon the Province of Ontario."
1918,c.14,s.6, part.

(e) Advance funds to the Commission where Legislative appropriation in respect of any work has become exhausted

and the Chairman reports the necessity and expediency of proceeding with the work.

"24(b) Where the appropriation made by the Legislature for any work of the Commission shall become exhausted in any fiscal year and the Chairman reports to the Lieutenant-Governor in Council that it is necessary and expedient that such work shall be proceeded with and that an additional sum is required for that purpose, the Lieutenant-Governor in Council may order a special warrant to be prepared to be signed by the Lieutenant-Governor for the issue of the amount estimated to be required in such fiscal year, and when issued such amount shall be placed by the Treasurer of Ontario to the credit of a special account against which cheques may be issued in favour of the Commission for such amounts as shall be required." 1920, c.18, s.4.

(2) The Commission may:

(a) Upon the authority of the Lieutenant-Governor in Council issue bonds or other securities for any of the purposes set out in Clauses (a) to (g) of Section 8, such as the acquisition of distribution plants or shares in development companies.

8.(h) "issue bonds, debentures or other securities of the Commission for any of the purposes set out in Clauses (a) to (g) in such form and containing such terms and at such rate of interest and payable in such manner and at such time or times as the Lieutenant-Governor in Council may determine".
1917, c.20, s.5, part.

(b) Borrow money for its general purposes and issue its own bonds or other securities therefor.

14f. "Subject to the approval of the Lieutenant-Governor in Council, the Commission may borrow money from time to time for the purposes of the Commission and issue bonds, debentures and other securities of the Commission therefor".
1918, c.14, s.6, part.

B. Under the Ontario-Niagara Development Acts of 1916-1917, certain special provisions with regard to the financing of works constructed or acquired under these Acts are as follows:

> 4 - (1) "The cost of the construction and maintenance of the works authorized by this Act shall be defrayed out of such money as may, from time to time, be appropriated by the Legislature for that purpose, and the works which may be authorized under Section 3 shall be carried out and constructed as far as possible in such a manner that an appropriation made in any one fiscal year shall not be exceeded by the cost of the work to be carried out in that year".
>
> (2) "The Government may direct the Treasurer of Ontario from time to time to pay over to the Commission out of such sums, any sums which may be required to defray the cost of the works carried on by the Commission under this Act, and all such sums shall be duly accounted for as hereinafter provided".
>
> 1916,c.20,s.4.
>
> 9 - (1) "The Commission with the approval of the Lieutenant-Governor in Council may issue bonds, debentures or other securities of the Commission for any of the purposes set out in Sections 3 and 4 and in such form, and containing such terms, and at such rate of interest and payable in such manner and at such time or times as the Lieutenant-Governor in Council may determine".
>
> (2) "Section 14c of The Power Commission Act shall apply to the bonds, debentures or other securities which may be issued by the Commission under the authority of Subsection 1".
>
> 1917,c.21,s.9.

2. Historical Sketch

Every provision recited above under the heading "Present Law", with the exception of Section 14 of the Power Commission Act, was passed during the years 1916, 1917 and 1918. Section

14 has not been amended as to form since its original enactment in 1906. Section 4 of the Ontario Niagara Development Act was passed in 1916; Clause (h) of Section 8, Sections 14c and 14d of the Power Commission Act and Section 9 of the Ontario Niagara Development Act, 1917, were enacted in 1917; and Sections 14e and 14f of the Power Commission Act were passed in the year 1918.

3. Comment

Prior to 1917 the Legislature was, in effect, the only source of funds for undertakings of the Commission. Up to that time the capital investment in all Hydro undertakings, including the Central Ontario System, was represented by cash advances or bonds issued by the Province, in the amount of some $22,000,000.

Between 1917 and 1922, inclusive, in the exercise of the borrowing powers enumerated above in respect of the acquisition of The Ontario Power Company, the Queenston-Chippawa Development and other works, the liability of the Province for undertakings of the Commission including the Central Ontario System had amounted to almost $160,000,000.

There is no doubt that under the provisions recited, and particularly Section 14f, the Commission and the Lieutenant-Governor in Council can, without the approval of the Legislature, pledge the credit of the Province to an unlimited extent. Within the past seven years the percentage of Provincial liability in

respect of undertakings of the Commission, including the Central Ontario System to the total liability of the Province, has increased from 31.56% to 55.40%. It is submitted that in order to safeguard the interests and the credit of the Province generally and that of the Hydro municipalities to whom the cost of power has substantially increased during the same seven-year period, in particular, the Act should be amended to require the endorsation of the Legislature to the exercise of the borrowing powers of the Commission and the Province.

Attention may be here drawn to the effect of Section 24b hereinbefore quoted and to the procedure adopted when applications for the issue of Special Warrants thereunder were made by the Commission.

Prior to the enactment of this section, Special Warrants were issuable only "when expenditure not foreseen or provided for by the Legislature is urgently required for the public good ... and .... there is no Legislative provision therefor", as provided in Section 14 of The Audit Act, R.S.O., Chapter 23. By Section 26 of The Audit Act provision was made for the issue of a "Treasury Board Minute", "where an appropriation is exhausted and the public interest or the urgent requirements of the public service necessitates further payments". An important change in public policy was effected by the passage of Section 24b, if the intention of the section was, as it appears to have been, to authorize the issue of Special Warrants and the expenditure of Provincial moneys, not appropriated by vote of the Legislature,

on occasions not contemplated by The Audit Act, and for purposes for which Treasury Board Minutes might have been issued, if public interest or the urgent requirements of the public service necessitated further payments.

The action taken by the Government when the Commission, as it did from time to time, made application for the issue of Special Warrants pursuant to Section 24b was not in accordance with the Section in that it did not issue Special Warrants but passed Treasury Board Minutes, of which no mention is made in the section. To comply with the section, Special Warrants should have been issued. For the passage of Treasury Board Minutes no application by the Commission under the section was necessary. The fact that shortly after and throughout the year following the Session of 1920, when Section 24b was passed and at which liberal appropriations were voted for the works of the Commission for its estimated expenditures, applications were made for Special Warrants for large additional sums, naturally arouses the suspicion that the Section was passed at the instigation of the Commission to avoid application to the Legislature for appropriations to an amount which would occasion discussion, criticism and perhaps refusal.

It may also here be noted that, Section 24(b) not being referred to in the Ontario Niagara Development Acts, it is questionable if it is applicable to applications by the Commission for Special Warrants to meet expenditures in excess of appropriations for the works acquired or constructed under the provisions of those Acts.

T A X A T I O N

Municipal Taxation

1. Present Law

The Power Commission Act

The land, but not the buildings or other improvements, erected thereon, owned by or vested in the Commission, is liable to assessment and taxation for municipal and school purposes.

> 12a.-(1) "Notwithstanding anything in The Assessment Act contained, land owned by and vested in the Commission shall be subject to assessment and taxation for municipal and school purposes at the actual value thereof according to the average value of the land in the locality.
>
> (2) "Subsection 1 shall not apply to or include buildings, machinery, works, structures, substructures, rails, ties, poles and other property, works or improvements owned, used or controlled by the Commission, nor an easement or the right of use or occupation or other interest in land not owned by the Commission, but all such buildings, machinery, works, structures, substructures, superstructures, rails, ties, poles and other property, works or improvements owned, used or controlled by the Commission, and every such easement or right, shall continue to be exempt from assessment and taxation as heretofore." 1917,c.20,s.4. new.

The Assessment Act

The Assessment Act contains a similar provision with respect to the land and property of the local Hydro Commissions or other bodies representing municipal corporations.

> 48a.-(1) "Land owned by or vested in a municipal corporation or commission or in trustees or any other body acting for and on behalf of a municipal

APPENDIX

GENERAL CONDITIONS

1. CONSENT OF

THE CROWN CONSTRUCTION ACT

The Crown has not the priviledge of Eminent Domain, however Crown, which is required in the construction, is liable to maintenance and therefore for municipal and school taxes.

(2) Expropriation existing in the interests of the Crown. Land owned by and vested in the Crown for municipal purposes in maintenance and construction shall be subject to municipal and school taxes for municipal and school purposes at the actual value of the land in the jurisdiction.

(3) "Appropriation" shall not apply to or include buildings, machinery, water, electricity, telephone, railways, rails, ties, poles and other property, works or improvements owned, used or controlled by the Commission, or on behalf of the right of way or otherwise or other interest in land not owned by the Commission, but all such buildings, machinery, rails, ties, poles and other property, structures, electricity, telephone, telegraph, and other property, works or improvements, and or particular of the Commission, shall be exempt from assessment and taxation as municipal, school or other purposes.

1947,c.60,s.4. amd.

THE INTERNAL ACT

The Internal Act contains a similar provision with respect to the land and property of the Crown incorporations or other other municipal authorities.

(2) "Land owned by or vested in a municipal corporation or municipality or in trustees or any other such entity for use as public or municipal purposes shall be exempt from taxation.

corporation and used for the purpose of supplying water, light, heat or power to the inhabitants of the municipality, or for the purposes of a railway, electric railway, street railway or tramway shall be liable to assessment and taxation for municipal and school purposes in the municipality in which it is situate at its actual value, according to the average value of land in the locality.

(2) Subsection 1 shall not apply to or include a highway, street, lane or other public place, nor shall it apply to or include buildings, machinery, works, structures, substructures, superstructures, rails, ties, pipes, poles and other property, works, or improvements, owned, used or controlled by such municipal corporation, commission, trustee or other body, nor an easement or the right of use or occupation or other interest in land not owned by such municipal corporation, commission, trustee or other body, but every such highway, street, lane or other public place, and all such buildings, machinery, works, structures, substructures, superstructures, rails, ties, pipes, poles and other property works or improvements so owned, used or controlled, and every such easement or right shall continue to be exempt from assessment and taxation as heretofore". 1918,c.20,s.39.

Except as provided in Section 45a, the property of all counties, municipalities and public commissions wherever situate within the Province is exempt from assessment and taxation.

5. "All real property in Ontario and all income derived either within or out of Ontario by any person resident therein, or received in Ontario by or on behalf of any person resident out of the same shall be liable to taxation, subject to the following exemptions:

7. Except as provided in Section 45a, the property belonging to or leased by any county or municipality or vested in or controlled by any public commission wherever situate and whether occupied for the purposes thereof or unoccupied; but not when occupied by a tenant or lessee.

1892,c.48,s.7,par.7; R.S.O.1897,c.224,s.7,par.7; 1904,c.23,s.5,par.6 amended; 1913,c.45,s.3 amended; R.S.O.1914,c.195,s.5,par.7 reenacted and amended; 1917,c.45,s.2, amended; 1918,c.20,s.37.

2. Historical Sketch

Ever since 1892 (c.48,s.7), and probably earlier, the property belonging to municipal corporations, not occupied by a tenant or lessee, has been exempt from assessment or taxation. In 1913, the Act was amended to include the property of any "public commission" within the exemption:

> 5. "All real property in this Province and all income either within or without of this Province by any person resident therein, or received in this Province by or on behalf of any person resident out of the same shall be liable to taxation, subject to the following exemptions, that is to say:-
> 6. The property belonging to any county or municipality <u>or vested in or controlled by any public commission wherever situate</u>, whether occupied for the purposes thereof or unoccupied; but not when occupied by any person as tenant or lessee."
> (1904,c.23,s.5,par.6; 1913,c.45,s.3 - underlined words added. R.S.O.1914,c.195,s.5,par.7 - re-enacted with addition doubly underlined words.)

The only amendment made by the revision of 1914 was to make it clear that the exemption was to apply to such property "wherever situate".

Hence, prior to 1917, all the property of the Power Commission and the local commissions - all the undertakings of the Commission - were exempt from taxation. In 1917, section 12a of the Power Commission Act (ante) repealing the exemption so far as the land of the Power Commission was concerned, was passed; at the same time, the words "or leased by" were added

to paragraph 7 of Section 5 of the Assessment Act; and in 1918 Section 45a was enacted which repealed the exemption as to the land of the local Commissions also.

3. Comment

It is clear that all the undertakings of the Commission, including the property of the local municipal Commissions, are exempt from assessment and taxation except for the land "owned by and vested in" the Power Commission, or in the municipal corporations or some body acting for and on behalf of the municipal corporations. There is some doubt, however, as to the applications of the law to the railway undertakings of the Commission and to companies such as The Ontario Power Company where the capital stock is owned by the Commission.

There is no provision in any of the Hydro Railway Acts respecting taxation. The Guelph Radial Railway and the Sandwich, Windsor and Amherstburg Railway and the Windsor and Tecumseh Electric Railway are being treated as though they were within the exemptions described in the Power Commission Act and the Assessment Act. It is suggested that if the principle of the present exemptions is confirmed, the Railway Act should be amended to make specific provisions with regard to railways operated by the Commission. In any event, it should be made clear that the provisions of the Power Commission Act relate only to the Power undertakings of the Commission.

The other point to be noted - and these remarks apply to the Railway companies mentioned - is that Section 18a does not

[illegible]

land of the local Commissions also.

4. Conclusion

It is clear that all the undertakings of the Commission, including the property of the local municipal commissions, are merely live on consent and taxation except for the land "granted by and vested in" the Local Commissions, or in the municipal corporations or some body acting for and on behalf of the municipal corporations. Path is more remote. However, as to the capitalisation of the law in the railway undertakings of the Commissions and in [illegible] the Ontario Power Commission where the capital stock is owned by the Commissions.

There is no question in view of the Ontario Railway and Municipal Commission. The Niagara and Lake Railway and the Toronto, Windsor and Amherstburg Railway and the Hydro-Electric Commission Electric Railway are being treated as though they were within the exemptions described in the Power Commission Act and the Attornment Act. It is suggested that if the principle of the present exemption is continued, the Railway Act should be amended to make specific provision with respect to railways owned by the Commissions. In any event, it should be made clear that the provisions of the Power Commission Act relates only to the Power undertakings of the Commission.

The other point to be noted - and those remarks apply to the railway undertakings mentioned - is that unless the Acts and

contemplate the control by the Commission of companies such as The Ontario Power Company. It cannot be said that the land of The Ontario Power Company is "owned by and vested in the Commission" within the meaning of that Section. A similar situation will arise wherever the corporate existence of any company is continued after its acquisition by the Commission.

This Commission's Report entitled "The Ontario Power Company of Niagara Falls" describes the agreements negotiated and assumed by the Commission with the municipalities of Niagara Falls and Stamford with respect to taxation. It is submitted that the present state of the law is provocative of acrimonious disputes between public bodies such as the Commission and the Municipal Council of Niagara Falls and that haste should be made to remove all doubts as to the intention of the Legislature.

Provincial Taxation

1. Present Law

The Corporations Tax Act, which provides for the payment of certain Provincial taxes by insurance, railway and other companies, does not apply to railways and electric works owned and operated by a municipal corporation.

> 3. "This Act shall not apply to railways, street railways, gas, electric or telephone works owned and operated by a municipal corporation, whether operated directly by the corporation or by a Board or Commission".
> R.S.O. 1914, c.27, s.3.

2. Historical Sketch

The above Section was enacted in its present form in 1908 (c.14,s.3) but prior thereto it would appear that the Province has never seen fit to tax the property of a municipal corporation.

3. Comment

It would seem a rather broad interpretation of Section 3 of the Act quoted above to apply its provisions to all the power and railway undertakings of the Commission including companies operated under the corporate name such as The Ontario Power Company. The fact is, however, that the Commission, the local commissions and the companies acquired by the Commission have never paid one dollar to the Province under the provisions of the Corporations Tax Act. This Commission's "General Report" contains certain recommendations with regard to the payment of provincial taxes. It is submitted that the policy of the Government with respect thereto should be determined as soon as possible and that the intention of the Legislature should be made clear at its next session.

6. Illegal Trade

The Royal Commission was engaged in its present form in 1926 (p.11). But prior knowledge it would appear that the Commission had early come out in favor of a monopoly organization.

7. Summary

It would seem a fairly safe generalization to position 3 of the job should serve to apply its provisions to all the power and railway undertakings of the Commission including transmission which is merely some sort of the public-utility company. The fact is, however, that the Commission, the local municipalities and the Ontario Legislature by the Municipalities Act, after this the policy is the further point the principles of the Ontario Hydro Act. This Commission's "General Report" emphasizes serious considerations with regard to the payment of financial taxes. It is submitted that the policy of the Government with regard thereto should be interpreted as such as partially at least the intention of the Legislature which is made also as the case demands.

O W N E R S H I P

The Power Commission Act does not expressly declare upon what trusts the Commission shall hold the works, equipment and other property and rights, acquired or constructed by it under the authority of the Act, nor does it make any express provision in respect of the future beneficial ownership of those works and properties.

Section 22 of the Act, passed in its present form in 1918, provides:

> "The expenditure of the Commission upon any works undertaken under the provisions of this Act for the benefit of any municipality or municipalities which have entered into contracts with the Commission shall be repayable to the Commission by such municipality or municipalities." 8 Geo.V. c.14, s.10.

Prior to 1918 the corresponding section of the Act read as follows:

> "The expenditure of the Commission upon any works undertaken under the provisions of this Act, shall be repayable to the Commission by the Municipal Corporations, which have entered into contracts with the Commission."

The full title of the Act, "An Act to provide for the Transmission of Electrical Power to Municipalities", taken in connection with the last quoted section indicates that the Legislature originally intended that the cost of all works undertaken by the Commission under the provisions of the Act would be repaid by municipal corporations which have entered into contracts with the Commission whether these works were undertaken for the benefit

of these municipal corporations or for supplying railway companies, distributing companies or any other corporations or persons, with whom the Commission was authorised by the Act, subject to the approval of the Lieutenant-Governor in Council, to contract for a supply of electrical power. It would naturally follow that upon repayment of this cost by the municipal corporations the works would be vested in, or held for, them as beneficial owners thereof. Pending repayment, however, the works acquired and constructed by the Commission should be regarded as held by the Commission as security for the moneys advanced to and expended by the Commission. The municipal corporations would receive benefit from profits made upon contracts for power with others than themselves, as the Act directs that the net profits from these contracts "shall be applied in payment of the cost of maintaining the works acquired or constructed and operated by the Commission". (Sec. 21). No provision is made for losses upon such contracts, but these naturally would fall upon the municipal corporations as they would be incurred in operation of the works.

When Section 22 was passed in 1918 and the liability of municipalities for repayment was limited to expenditures of the Commission upon works undertaken for their benefit, no provision was made for repayment of expenditures on works for the supply of power to others than municipal corporations who have entered into contracts with the Commission. Advances have been made and liabilities assumed by the Province in respect of these works, profits may be made or losses may be incurred from their

operation. It were well to determine by statute the rights and liabilities in respect of these works.

One of the terms of the usual form of agreement entered into between the Commission and municipal corporations is as follows:

> "It is hereby declared that the Commission is to be a trustee of all property held by the Commission under this agreement for the Corporation and other Municipal Corporations supplied by the Commission, but the Commission shall be entitled to a lien upon said property for all moneys expended by the Commission under this agreement and not repaid. At the expiration of this agreement the Commission shall determine and adjust the rights of the Corporation and other Municipal Corporations, supplied by the Commission, having regard to the amounts paid by them respectively, under the terms of this agreement, and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."

The agreements generally, if not universally, have been confirmed and ratified by Statute and have therefore the validity of statutory enactments. The wording of the clause is substantially adopted to form Section 6 of The Ontario Niagara Development Act, 1917.

> "6.-(1) It is hereby declared that the Commission is to be a trustee of all the works constructed or acquired under the authority of this Act for the municipal corporations which have heretofore entered or may hereafter enter into contracts with the Commission for a supply of electrical power or energy from Niagara Falls or the vicinity, but the Commission shall be entitled to a lien upon the said works until all sums expended by the Commission on account of the construction and equipment of such works have been paid.
> (2) Upon the payment of the amounts expended by the Commission upon the construction and equipment of the works, the Commission shall determine and adjust the rights of the municipal corporations, having regard to the amounts paid by them respectively, and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."
> 7 Geo. V, c.21, s.6.

operation. Courts will be satisfied by provision for rights-of-way

liability to vendors or lessees.

The act gives to the usual form of agreement entered

into between the Commission and municipal corporations is as follows:

"It is hereby declared that the commission is to be a trustee of all property held by the commission under this agreement for the Commission and under the jurisdiction supplied by the Commission, and the municipality shall be entitled to a free open park property for all purposes expressed by the Commission under this agreement and approval. As the acquisition of ohio agreement and the inter-state commerce and motor vehicle rights of the Government and other Municipal corporations, supplied by the Commission, merely serves to the economic well by these responsibilities, under the terms of this agreement, the case might participation as may equally applicable to the commission and are approved by the Lieutenant-Governor in Council."

The agreements, however, if not universally, have been

availed and notified by lessees and have therefore the validity

of statutory instruments. The validity of the right to solicitability

adopted in Ford Justice S of the Public Utilities Development Act,

1947.

"4.-(1) It is hereby declared that the commission is to be a trustee of all the power transmitted or supplied under the authority of this Act for the municipal corporations which have bonneatore entered or may hereafter enter into agreements with the Commission for a supply of electrical power or energy from Niagara Falls or elsewhere in Ontario, or for a supply of electrical power or energy from Niagara Falls or elsewhere in Ontario, or for a supply of electrical power or energy to be utilized in a line upon the soil which will be used by the municipalities as authorized by the commission and equipment at such price have been paid.

(2) Upon the payment of the amounts accrued by the municipalities upon the construction and equipment of the power, the Commission shall determine and declare the right of the municipal corporations, during regard to the amounts paid by them respectively, and such other arrangements as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."

7 Geo. V, c.23, s.4.

A difference to be noted between the clause of the agreement and the section of the Act is that in the former the rights of the municipal corporations are to be determined and adjusted at the expiration of the agreements, and in the latter, upon payment of the amounts expended by the Commission. This difference is a material one in view of the fact that at the expiration of all, or of the majority of the agreements, the expenditures will not have been fully repaid, but the municipal corporations notwithstanding this will be entitled to a proprietary interest in the property included in the agreements with them, in proportion to the amount contributed by them towards repayment. In the case of works constructed or acquired by the Commission under the Ontario Niagara Development Act, no right of ownership accrues to the municipalities until payment of the full amount expended thereon by the Commission. In both cases the declaration that the Commission is a trustee for municipal corporations and is entitled to a lien until repaid its expenditures is equivalent to a declaration that the Commission retains possession and title to the property subject to the right of municipalities to a proprietary interest therein in certain proportions under defined circumstances. In the case of works acquired or constructed for the benefit of municipalities under the Power Commission Act, there is a statutory liability upon the municipalities to repay the expenditures of the Commission, while there is no similar statutory obligation in the case of works acquired or constructed under the provisions of the Ontario Niagara Development Act. The position of

municipalities in the one case is analogous to that of a purchaser who has entered into a binding agreement to purchase a property and the other to that of a proposing purchaser who holds an option to purchase. Pending payment of the purchase price, the title of the property and the vendor's lien thereon for the purchase money is vested in the Commission, not as beneficial owner thereof, but on behalf of the Province and as security for the advances made or liability assumed by the Province for the payment of the cost of the acquiring or constructing the property.

The only method provided by the Power Commission Act for repayment by municipalities of the expenditure of the Commission upon works under that Act for their benefit or, in other words, the terms of payment of the purchase price of these works, are set out in Section 23 of the Act. As part of the cost of power, a municipal corporation which has entered into a contract with the Commission for a supply of power at cost, is required to pay to the Commission its proportion of an annual sum sufficient to form in thirty years with interest at four per cent. per annum a sinking fund for the repayment of the advances made by Ontario for the payment of the cost of the works. Where payment of the cost of the works was made from advances by the Province for that purpose and there has been paid by municipal corporations interested before the expiration of their agreements an amount on sinking fund account sufficient, with interest, to repay these advances, no difficulty need arise in vesting in the

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municipalities in proper proportions full ownership of the works and divesting the Province from all interest therein. As, however, the Commission has adopted the policy of relieving, as it is authorized to do, municipal corporations from payments on account of sinking fund during the first five years of the term of their contracts, and which term, in most cases, is a period of thirty years or less, it is evident that the sinking fund accumulated at the expiration of these contracts will be insufficient for the repayment of the advances made by the Province and that full ownership of the works cannot be vested in the municipalities. Extensions and improvements may be made to the works during the term of the contracts. Annual payments for the purpose of providing a sinking fund on a thirty-year basis for repayment of advances made by the Province for payment of the cost of these extensions and improvements, especially when the Commission, without authority, relieves the municipal corporations from payments on this sinking fund account for the first five years after the expenditure has been made for these extensions and improvements, will, at the expiration of the contracts, fall far short of being sufficient to repay the advances made by the Province, and the rights of ownership of the works acquired by the municipalities will be proportionately less. The Commission, under the agreements, will retain a lien for the portion of its expenditure not repaid at their expiration. This lien will or should enure to the benefit of the Province as security for the balance not repaid to it.

The Act contains provision neither for release of this lien nor procedure for enforcing payment by the municipalities of the balance of expenditures upon the works.

The situation in regard to works and properties not included in agreements between the Commission and municipal corporations for supply of power at cost is even more unsatisfactory and calls for clarification by Legislation.

The present or future ownership of works and other property employed in or in connection with the transmission and distribution of electric power to consumers in the so-called Essex and Thorold Systems, and to other consumers, who are not supplied on a "power at cost" basis, and of the shares of capital stock of Ontario Power Company and other corporations is not defined by the Power Commission Act. The Act makes no provision for the establishment of sinking funds for the repayment of advances made by the Province or as security for obligations assumed by the Province for payment of the cost of these works and properties. Sinking funds have in fact been established by the Commission in respect of the cost of acquisition or construction of some, if not all, the works and properties operated by the Commission, but there is no statutory obligation on the Commission to establish sinking funds in respect of other than those included in agreements with municipal corporations being supplied with power on a cost basis. The Commission, it is understood, has taken the position that there is no obligation upon it to invest payments made on sinking fund account, other than those received as part of the annual cost of power to contracting

municipal corporations, in Provincial securities and to deliver these securities to the Treasurer of Ontario.

Section 15(1) of the Power Commission Act is as follows:

"All sums received by the Commission from municipal corporations and others on sinking fund account shall be invested by the Commission in securities of the Province of Ontario, and also all interest accruing thereon; and such securities shall be delivered by the Commission to the Treasurer of Ontario as security for repayment of the advances made by the Province to the Commission."

If the position taken by the Commission, as above mentioned, be in accord with the intention of the Legislature, Section 15(1) would seem to require such amendment as would remove doubt. If the section were intended to apply generally, as the wording clearly indicates, it is suggested that the Power Commission Act be amended by adding a section to precede Section 15 to the following effect:

(1) "The Commission shall apportion and set aside out of the revenues of each of the works, undertakings and companies acquired, constructed or controlled by it, under the provisions of this Act, an annual sum sufficient to form in thirty years with interest at four per cent. a sinking fund for the repayment of advances made, and for the retirement of securities guaranteed, or assumed, by the Province for the payment of the cost of the works, undertakings and companies so acquired, constructed or controlled."

(2) "Subject to the approval of the Lieutenant-Governor in Council, the Commission, for a period not exceeding five years from the date of the acquisition or construction of works and undertakings controlled and operated by it, may defer the date upon which the apportionment and setting aside annual sums on account of such sinking funds shall commence."

A section in similar terms might be added as an amendment to the Ontario Niagara Development Act.

Mailing correspondence, in provincial territories and to deliver these documents to the Treasurer of Canada.

Section 1(1) of the Power Commission Act is as follows:

"All funds received by the Commission from municipal corporations and others as rights that arrears shall be imposed by the Commission in respect of the various districts, and also all interest accruing thereon and such securities shall be delivered by the Commission to the Treasurer of Canada as soon as the Commission."

If the policies taken by the Commission, as above mentioned, be in accord with the intention of the Legislature, section 1(1) will need to be regular such amendment as will remove doubt. If the policies were intended to apply generally, as the matter directly indicates, it is recommended that the Power Commission act be amended by adding a section to provide therein in to the following effect:

(1) "The Commission shall administer and set rates with respect to the measures of each of the works, undertakings and undertakings required, constructed or maintained by it, under the provisions of this Act, as shall be sufficient to form in every year with interest as first per week, a sinking fund for the redemption of arrears made, and for the retirement of securities and expenses as required, or deemed, by the provisions for the payment of the cost of the works, undertakings and undertakings as required, constructed or commenced."

(2) "Subject to the approval of the Lieutenant-Governor in Council, the Commission, for a period not exceeding five years from the date of the regulations or amendments of which may undertakings constructed and operated by it, may defer the date upon which the depreciation and sinking funds should commence or accrue."

A section in similar terms might be added as an amendment to the Power Commission Act.

As in the case of works and equipment acquired or constructed for the supply of power to others than municipal corporations which have entered into "power at cost" contracts, the revenues may not be sufficient to provide for credits to sinking fund reserves, deficits incurred by such credits must be met from some source. These works being connected with the works of one or other of the "Systems", as defined by the Power Commission Act, deficits thus arising might well be met out of the contingency reserve on the respective systems, as was done in the year ending October 31st, 1912, with losses sustained on contracts with companies in the Niagara System. On the other hand, net profits in such cases might properly be credited to contingency reserves of the respective systems.

Provision thus being made for the eventual repayment of Provincial advances and the release of obligations on securities guaranteed or assumed by the Province by means of accumulated sinking fund reserves, the Province would have more satisfactory security than at present for moneys advanced and obligations assumed for the benefit of parts of the Province. Pending complete payment and release from obligation, it seems but right that the Acts, under which the several works have been acquired or constructed with Provincial moneys or on the credit of the Province, should declare that the Province is beneficial owner of these several works and of any liens thereon reserved to the Commission by Statute or otherwise subject to the vesting of such

beneficial ownership or of interests therein in the municipalities served by the works in proportion to their respective contributions to sinking fund reserves with accumulated interest thereon.

It is suggested that the Power Commission Act be amended by adding thereto:

> "It is hereby declared that all the works, undertakings and companies acquired, constructed or controlled by the Commission under the authority of this Act and the cost whereof has been paid from advances made by the Province of Ontario or by securities guaranteed or assumed by the Province, are held by the Commission as security for the repayment of such advances and release of the Province from obligations under its guarantees and that upon repayment of such advances and release from such obligations, the Commission shall determine and adjust the rights of municipal corporations served by such works, undertakings and companies and apportion amongst them the ownership thereof, having regard to the amounts paid by them respectively and such other considerations as may appear equitable to the Commission and are approved by the Lieutenant-Governor in Council."

A section in similar terms should be substituted for Section 6 of the Ontario Niagara Development Act, 1917, to produce uniformity in security to the Province and in title and present and future ownership of all the power undertakings of the Commission.

It is submitted that the statutory amendments hereinbefore suggested are not of a drastic nature and do not in any material respect alter the conditions generally understood to now exist, but merely define and determine by Legislative enactment the respective rights and liabilities of the Province, the Commission and municipalities which have entered into "power at cost" contracts, in respect of the works and undertakings acquired, constructed and operated for the benefit of these municipalities and in

respect of expenditures made in acquiring and constructing these works and undertakings.